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# **The Construction of Solidarity in a German Central Works Council: Implications for European Works Councils**

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A thesis submitted in partial fulfilment of the requirements for the degree of  
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## Table of Contents

<b>Chapter One: Introduction and Overview.....</b>	<b>13</b>
1.1. Introduction .....	13
1.2. Overview .....	14
<b>Chapter Two: A Review of the Literature.....</b>	<b>16</b>
2.1. The state of play of EWC research.....	16
2.2. The transnationalisation of companies and its implications for labour.....	21
2.3. EWCs and the problem of company-internal competition .....	23
2.4. Internal cohesion and European identity: fostering EWCs' effectiveness .....	28
2.5. What is known about central and group works councils?.....	31
<b>Chapter Three: Key analytical issues – Federalism, Democracy and Solidarity .....</b>	<b>41</b>
3.1. Introduction .....	41
3.2. Multi-level systems of employee representation.....	42
3.3. The contribution of theories of federalism .....	43
3.4. A multi-tiered system of works councils as laid out in the BetrVG .....	45
3.5. The CWC as a federal political order .....	49
3.6. The CWC as an interlocking form of federalism.....	57
3.7. Democratic theory.....	59
3.8. What is solidarity? .....	63
3.9. Tying it all together: federalism, democratic theory and solidarity .....	81
<b>Chapter Four: Methodology and Method.....</b>	<b>85</b>
4.1. Metatheoretical assumptions and research design .....	85
4.2. Methods.....	87
<b>Chapter Five: The Central Works Council at DaimlerChrysler: a Case Study .....</b>	<b>100</b>
5.1. Introducing the case study: the central works council at DaimlerChrysler ..	100
5.2. The CWC's constituents: the members of the local works councils .....	111
5.3. The role of the CWC commissions, project groups, working groups, etc. ....	128
5.4. Constitutional politics in the Central Works Council.....	135
5.5. The role of the CWC in the federalist system of interest representation .....	150
5.6. The role of the local works councils within the federalist system of interest representation.....	163
5.7. The allocation of authority in practice: who has the last word? .....	176
5.8. The challenge of dual allegiance.....	181

<b>Chapter Six: Implications for EWCs .....</b>	<b>192</b>
6.1. The European Works Council Directive (EWCD) and negotiated EWC agreements: a foundation for a federalist order at European company level?.....	193
6.2. Decision-making in EWCs: an open question.....	214
6.3. Negotiations in EWCs: Motivation and prerequisites .....	221
6.4. What does this tell us about solidarity in EWCs? .....	227
<b>Chapter Seven: Summary and implications for further research, policy and practice .....</b>	<b>233</b>
7.1. Summary .....	233
7.2. Implications for policy, practice and future research .....	234
<b>Bibliography.....</b>	<b>250</b>
<b>Appendix: List of Interviews .....</b>	<b>267</b>

## List of Tables

Table 1: Local works council members at DaimlerChrysler factories _____	96
Table 2: The CWC at DaimlerChrysler AG in 1999 _____	102
Table 3: Participants in CWC meetings at DaimlerChrysler in 1999 _____	105
Table 4: Full members of the CWC _____	107
Table 5: Synopsis of the working groups: advantages and disadvantages of each proposed model for a “Preparation and Coordination Committee for the CWC” _____	145
Table 6: Results of the vote on leadership of the CWC _____	147
Table 7: National EWC Legislation: Method of nomination of domestic employee representatives to EWCs _____	197
Table 8: Explicit provisions in EWC legislation that members of the EWC select committee must come from different countries. _____	208
Table 9: Issues for Information and Consultation in Article 13 and Article 6 Agreements ____	211
Table 10: Decision-making within EWC established according to the subsidiary requirements _____	215

## List of Figures

Figure 1: A multi-level system of works councils according to the Betriebsverfassungsgesetz (BetrVG) .....	48
Figure 2: Return rate by site .....	97
Figure 3: Representativeness.....	98
Figure 4: Works council structures at Daimler Chrysler AG (1999) .....	101
Figure 5: Gender and group affiliation of CWC members.....	107
Figure 6: Terms of office of CWC members at the local and central level.....	109
Figure 7: Age, gender and group affiliation of local works council members .....	112
Figure 8: Trade union membership among local works council members .....	114
Figure 9: Union offices held by local works council members.....	115
Figure 10: The influence of the union in opinion-forming processes .....	116
Figure 11: The advisory role of the IG Metall .....	116
Figure 12: Political party membership and offices.....	118
Figure 13: Length of experience at DaimlerChrysler and in the local works council .....	119
Figure 14: Hours spent on works council activity per week .....	120
Figure 15: External influences on works councillors' opinion-forming processes .....	122
Figure 16: Single most important influence on opinion-forming processes.....	122
Figure 17: Sources of information about the work of the CWC .....	124
Figure 18: Number of works council members who have worked at another site.....	125
Figure 19: Membership in cross-site committees .....	126
Figure 20: Relevance of and access to the work of the CWC.....	127
Figure 21: Committees, Commissions, Project Groups, & Task Forces of the CWC at DaimlerChrysler (1999).....	129
Figure 22: The CWC and the local works councils .....	165
Figure 23: Who calls the tune? The determination of policy .....	178
Figure 24: Allegiance to the local level .....	183
Figure 25: Interdependent sites .....	184
Figure 26: Local works council members' assessment of the overall performance of the CWC .....	185
Figure 27: Interest aggregation and balance in the CWC: Local works council members' assessment .....	187
Figure 28: Dual allegiance I.....	188
Figure 29: Dual allegiance II.....	189
Figure 30: A multi-level system of works councils according to the EWC Directive.....	202
Figure 31: A sliding scale of EWC roles and activities .....	228

## Abbreviations

<b>BetrVG</b>	<i>Betriebsverfassungsgesetz</i> (Works Constitution Act)
<b>CWC</b>	Central Works Council
<b>DCAG</b>	DaimlerChrysler Aktiengesellschaft
<b>EWC</b>	European Works Council
<b>GBR</b>	<i>Gesamtbetriebsrat</i> (Central Works Council)
<b>GWC</b>	Group Works Council
<b>KBR</b>	<i>Konzernbetriebsrat</i> (Group Works Council)
<b>MBVG</b>	Mercedes Benz Vertriebsgesellschaft (Sales company)
<b>NLK</b>	<i>Niederlassungskommission</i> ( Sales and Service Commission)
<b>R&amp;D</b>	Research and Development
<b>S&amp;S</b>	Sales and Service
<b>WCA</b>	Works Constitution Act ( <i>Betriebsverfassungsgesetz</i> )



## Acknowledgements

At a seminar on European Works Councils held at the IG Metall's training centre in Berlin in January 1994, participants were debating whether or not European Works Councils could ever play a real role in coping with competition between sites. Some participants doubted whether EWC members would ever be able to trust one another enough to address problems openly. Then one participant pointed out that the dilemma is well-known in central works councils. He said words to the effect "I play with my cards close to my chest there too. But that doesn't mean that I'm willing to betray my colleagues."

The light bulb that switched on at that moment was the first of many which were so helpfully switched on by others. This insight – that the challenge of cross-site competition is not an unknown problem, but that it is one with which central works councils members have long experience – was the starting point for a process which culminates in this doctoral thesis.

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**Aline Hoffmann**

**Offenbach/Warwick June 2005**

## **Declaration**

This is to declare that I am responsible for the work submitted in this thesis. I have written this work. This work has not been submitted within a degree programme at this or any other institution

During the preparation of this thesis, the following paper was published:

Müller, T. and Hoffmann, A. (2001) *EWC Research: a Review of the Literature*. Warwick Papers in Industrial Relations No. 65  
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Aline Hoffmann  
Offenbach, April 2005

## Abstract

This thesis takes as its starting point the question whether European Works Councils (EWCs) can overcome the divisive pressures of cross-border competition for jobs and investment between sites. A review of the body of literature on EWCs yields that with respect to this question, opinion is divided and examples are contradictory. The central works council (CWC) established according to the German *Betriebsverfassungsgesetz* is identified as a close analogue to an EWC. In the absence of a body of literature on the internal functioning of CWCs, this research undertook to examine in depth the experience of a single CWC as a lead case. As an analytical framework, the contributions of theories of federalism as a means of reconciling unity and diversity were applied to the multi-level system of employee interest representation. A conceptualisation of solidarity as it might be generated among the members of a central and/or European works council is developed. It is concluded that a discursive/participative structure is most likely to enable the generation of solidarity across and within a multi-level, essentially federalist system. Key analytical factors are identified which are applied to the experience of the Central Works Council at DaimlerChrysler, and to EWCs more generally. Applying the methods of participant observation, semi-structured interviews with the CWC members, documentary analysis, and a postal survey of the local works council members, the operation of the central works council at DaimlerChrysler is explored in detail, covering its day-to-day functioning, its articulation with local works councils, and the values and expectations underlying its work. With reference to the conceptual framework, the findings from the case study are compared with EWC law and practice more generally. It is concluded that the EWC can be considered a nascent federalist system at most. Despite the existence of important gaps, however, this research concludes that solidarity within EWCs is possible if it can be built upon a participative and transparent set of institutions and processes which are seen by EWC members, national and local employee representatives, and trade unions to be fair and legitimate. The final chapter explores the implications of this research for policy, practice and further research.

*Seldom, very seldom does complete truth belong to any human disclosure; seldom can it happen that something is not a little disguised, or a little mistaken.*

Jane Austen, *Emma*

## Chapter One: Introduction and Overview

### 1.1. Introduction

Are European Works Councils only fair weather institutions? Fuelled by an increasing integration of management strategies and production, it has become a common strategy for management to try to extract concessions from trade unions and workplace employee representatives by threatening to withhold or withdraw investment and production capacities. With the deepening integration of the European economy in particular, this amounts to attempts to play sites in different countries against one another.

By providing a forum in which to exchange information and to coordinate local and/or national strategies, European Works Councils (EWC) could be an instrument to counter cross-site competition. Yet many commentators have implicitly or explicitly argued that even if EWCs can play a useful role in times of low conflict, the in-built – if at times latent – competition between sites for jobs and investments means that EWCs will not be able to overcome the divisive effects of such coercive comparisons.

The problem of cross-site competition is not new, however. Nor is the idea that a central institution which brings together employee representatives from different sites allows them to develop at least a partial solution to this dilemma: aside from the disciplining effect of obliging the employer to say the same thing to all representatives at the same time, such an institution can provide an invaluable framework for the exchange of information and, where appropriate, the coordination of local strategies in the face of a common threat. Many German *Gesamtbetriebsräte* (central works councils), for example, or French *comités de groupe* perform precisely this role.

This was the starting point to this research. If a German *Gesamtbetriebsrat*, for example, can be considered analogous to an EWC, in the sense that both are cross-site forums for the representation and defence of the employees' interests, then surely there must be a wealth of experience about the ways in which potential conflicts of interest can be handled in that forum if and when they arise. By drawing on the lessons learned within central works councils (CWC), perhaps the discussion about the prospects for solidarity could be moved beyond the exchange of positive and negative examples of EWCs' ability to respond to whipsawing strategies.

So how do central works councils function? Is there a conscious strategy to identify collective interests? How do CWCs decide how much differentiation is possible and how much uniformity is necessary? What promotes or hinders solidarity? What are its limits and opportunities? If solidarity can be generated in central works councils, can it be also be generated across borders within EWCs? These are the overarching questions which guide this research.

## **1.2. Overview**

In the absence of existing research about how central works councils actually function, this thesis therefore sets out to investigate the practical workings of a particularly integrative central works council in order to identify the lessons to be learned for the perspective of solidarity within EWCs.

Against the backdrop of the increasing europeanisation of company strategies, Chapter Two takes stock of what is known about the ability of EWCs to deal with potential conflicts of interest, particularly as they may arise in the course of cross-border restructuring processes. The existing if meagre body of knowledge about the ways in which German central works councils function is also examined.

In the absence of existing conceptualisations of the role and potential of CWCs, Chapter Three explores the ways in which the German multi-level system of interest representation, consisting of local, central, and group works councils, can be understood to be a federalist system which provides the means to accommodate both unity and diversity. The implications of democratic theory, in particular the contributions of notions of consociational democracy, are linked to the primarily organisational and policy-oriented characteristics of federalism. The meaning of and prerequisites for solidarity are discussed, and its relationship to federalism and democracy is explored. On this basis, the chapter identifies the key analytical issues which are needed to explain the way the CWC — and by analogy an EWC — can generate solidarity.

This research is necessarily explorative. Chapter Four explains the methodological implications of the central questions of this research and describes the research design and methods which were employed to gather and analyse appropriate data.

The case study of the Central Works Council at DaimlerChrysler which follows in Chapter Five provides a detailed analysis of the ways in which such an essentially federalist and pluralist system of multi-level employee interest representation

functions in practice to generate and affirm a fundamental willingness to exercise solidarity.

Chapter Six discusses the implications of these findings for the perspective of solidarity in European Works Councils. While EWCs may also be considered essentially federalist, compared to CWCs there are important limitations to their ability to generate solidarity. The concluding Chapter Seven discusses the implications of this research for policy, practice, and further research.



## **Chapter Two: A Review of the Literature**

### **2.1. The state of play of EWC research<sup>1</sup>**

Over time, the dynamic development of EWCs as a new European institution of employee interest representation has given rise to a wide variety of parallel streams of inquiry; this variety can be seen in both the range of issues addressed and the ways in which they were addressed.

#### **Changing agendas of EWC research over time**

The chronological development of EWC research clearly mirrors EWC practice; research approaches and focal questions shifted and changed over a relatively short span of time, taking into account an emerging and rapidly developing field of practice.

Early EWC research, when the prospect of statutory transnational employee representation seemed a far off prospect for some policymakers and trade unionists, was inspired by the political objective of supporting the struggle for the adoption of European legislation on information and consultation within European-scale companies<sup>2</sup>. The investigation of the handful of truly voluntary EWCs sought to underpin political pressure on European policymakers and to prove to reluctant employers that the establishment of EWCs would not necessarily lead companies into economic ruin (see for example Gold and Hall 1992, Lecher 1994, Rehfeldt 1994, Stoop 1994). Another stream of inquiry at that time was the analysis of the factors that contributed to the emergence of the first voluntary European-level information and consultation arrangements. Based on the analysis of the first French and German initiatives, the contributions by Northrup et al (1988), Schulten (1992), Marginson (1992 and 1994), and Streeck and Vitols (1995) demonstrated that the establishment of the first pioneer EWCs could be explained by the interplay between country-specific, sector-specific, and company-specific factors.

The period immediately following the adoption of the EWC Directive in 1994 saw the emergence of a considerable body of “implementation research” (Lecher 1996), which

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<sup>1</sup> This section draws heavily on an extensive review of EWC literature by Müller and Hoffmann (2001).

<sup>2</sup> European legislative initiatives in the 1970s and 1980s included the draft ‘Fifth’ company law Directive (1972 and 1973), the draft so-called ‘Vredeling Directive’ (1980 and 1983) and the draft Directive for a European Company Statute (1970 and 1975).

involved a predominantly legal discussion about the transposition of the EWC Directive into national law (Blanpain and Windey 1994, Blanpain and Hanami 1995, Bercusson 1996).

### **Quantitative and qualitative research on EWCs**

As the number of voluntarily concluded EWC agreements increased almost exponentially between September 1994 and September 1996, the analysis of the structural and operational features of these agreements became increasingly prominent in EWC research (Krieger and Bonneton 1995, Carley and Hall 1996, Rivest 1996, Knudsen and Bruun 1998, and Marginson et al. 1998). Reflecting the intimate relationship between EWC practice and EWC research, this stream of analysis had another peak in 1999/2000, as more and more agreements under the provisions of Article 6 were concluded (EWCB 1999a, 1999b, Carley and Marginson 2000; Lecher et al. 2001b).

Meanwhile, as more empirical material and experiences became available after 1996/1997, there was a steep increase in case study research on the actual practice of existing EWCs. Over the course of time, case study analyses of EWC practice became more differentiated, as specific factors which were assumed to influence the internal dynamics and the effectiveness of EWCs were isolated and investigated.

A number of studies investigated the influence of (external) structural factors, such as national employee representation structures. For example, the in-depth case studies by Helbig (1999) and Whittall (2000) of the EWCs at Volkswagen and BMW respectively demonstrate that the existence of strong national workforce representation structures in Germany, the home country of both companies, had a positive influence on the effectiveness of their EWCs. Both authors emphasise that it was in particular the strong position of the German EWC Chairmen in the national context which strengthened the EWC; by virtue of their functions as Chair of the Central Works Council and member of the Supervisory Board, both EWC Chairmen were able to mobilise substantial resources, such as infrastructure, information, and power for the benefit of the EWCs. Investigating the experience of EWCs in Dutch-based MNCs, Lamers (1998) and Veersma (1999) came to similar conclusions about the potentially positive impact of strong national employee representation structures on the availability of resources and the effectiveness of EWCs.

The comparative analysis of four EWCs by Lecher (1999) shows, however, that this depends strongly on the willingness of the home country's delegates to use their legally underpinned power position in the national context for the benefit of the EWC as a whole. If they are not willing, then the dominant position of one group can have

the opposite effect, as Wills' (2000) longitudinal analysis of the EWC in a company that was formed by an Anglo-French-American merger demonstrates. According to Wills (2000), the weakness of the EWC and the low degree of internal cooperation can be attributed to the dominance of the French delegates and their unwillingness to use their greater experience and political acumen, which was greater than that of the UK representatives, for the benefit of the EWC. Lecher's and Wills' examples show that strong national rights can also be detrimental to the development of a European identity and a common approach of the EWC, if the home country's delegation uses its national privileges to dominate the EWC and to stall attempts to develop a genuinely European orientation.

A further structural factor which was the focus of a number of studies about the effectiveness of EWCs was the organisational structure of companies and management's restructuring initiatives. The observed effects of this structural factor were similarly inconsistent. On the one hand, contributions by Gohde (1995) und Weston and Martinez Lucio (1997) suggest that re-structuring initiatives trigger transnational employee networking and cooperation. Weston and Martinez Lucio for example found that an integrated production structure coupled with a management strategies of benchmarking and/or cross-referencing contributes to the development of transnational cooperation among employee representatives. On the other hand, Hancké's (2000) analysis of restructuring measures in the automobile industry argues that management strategies of benchmarking and concession bargaining undermined transnational employee and trade union cooperation despite the existence of favourable structural conditions in the automobile industry in terms of a highly integrated and internationalised production structure. With respect to the influence of company structure on the effectiveness of EWCs, a more recent study by Marginson et al. (2004) shows that the likelihood that EWCs will have an impact on management decisions is greater in companies with a single business structure with substantial operations in several countries and whose management structures are highly integrated across borders. At the same time, there is no automatic effect; even though some company structures are found to be more conducive to the development of a European orientation of the EWC delegates and to transnational employee cooperation than others, the EWCs capacity to act still depends on the EWC delegates' willingness to utilise these potentially more favourable framework conditions.

These studies about the impact of structural factors, such as national employee representation structures or company structures, on the development of employee-side cooperation within and through the EWC and thus the effectiveness of EWCs demonstrates that the potential impact of these factors is mediated by the attitudes of the individual employee representatives. Or put differently: whether external factors have a positive or negative influence on the development and role of EWCs depends

on the delegates' context-bound strategic choices within their interaction processes. A further stream of empirical EWC research focused on the investigation of the impact of these inner-EWC processes which serve to generate social cohesion and an independent European identity on the effectiveness of EWCs. Since the conclusions drawn from this stream of empirical research are particularly relevant to the question of solidarity in EWCs, they will be discussed in more detail further below.

In sum, the analysis of most of the empirical research conducted following 1996 aimed to offer prescriptions designed to improve the 'effectiveness' of EWCs — whatever the various authors meant by 'effectiveness'. This stream of empirical EWC research relied heavily on the analysis of individual cases or standardised questionnaire surveys. Both are important methods to broaden the empirical knowledge base about the operation of EWCs. However, the case study findings heavily reflect the embeddedness of each EWC into a particular pattern of company-, sector- and country-specific framework conditions. While the development of a European identity and internal cohesion among the EWC delegates emerges from the case study findings as a crucial prerequisite for the 'effectiveness' of EWCs, the widely varying combination of factors which are identified as having an impact on the development of EWCs makes it difficult to generalise the case study findings.

Generalisation of the accumulated case study findings is further complicated by their reliance on different methodological approaches. It is possible to distinguish between structural approaches which focus on the influence of structural framework conditions, such as company or production structures and national IR structures, and actor-centred approaches, which concentrate on the impact of the individual characteristics of the actors involved. The case-specificity of the findings coupled with a diversity of methodological approaches highlighted the need for a systematic categorisation of specific roles or even developmental stages of EWCs and an examination of how these are in turn shaped by external and internal factors.

Next to broad-scale quantitative surveys to acquire an overview of broader developments such as the cross-national comparative analysis of the views of EWC representatives by Waddington (2001, 2003a), the most appropriate approach was to conduct large-scale, interview-based, in-depth comparative research projects using a multiple case study design. The obvious advantage of the comparative case study method over single case studies is that it allows the researcher(s) to control for a specific set of variables; furthermore, a systematic comparison of individual cases can provide the basis for the inductive development of what Hyman calls "classificatory instruments for the analysis of EWCs" (Hyman 2000: 6).

A first step in this direction was made by the large-scale comparative studies conducted by Lecher et al. (1998, 1999a). Based on a cross-country and cross-sectoral

comparison of 23 cases, the authors develop a typology of EWCs which is based on their 'capacity to act'. This typology comprises four ideal types of EWCs: the symbolic EWC, the service-oriented EWC, the project-oriented EWC, and the participation-oriented EWC. These ideal types can be seen as a developmental trajectory, in which the four types of EWCs represent different developmental stages on the way from a symbolic EWC, which merely exists on paper, to a participation-oriented EWC, which shows the strongest signs of internal cohesion and is recognised by management as an autonomous actor. According to Lecher et al., the defining characteristics of the progression from a symbolic EWC to a participation-oriented EWC are the EWCs' ability to overcome the domination of the home country delegation and the development of stable communication and working structures, through which the EWCs achieve autonomy from management and which enable them to create 'added value' for their members and the different national workforces they represent.

The underlying logic of the typology is twofold. On the one hand, the ideal types represent a developmental trajectory which traces the actual process of the EWCs' 'constitutional' development towards autonomy and a European identity. At the same time, the types are defined by the interests and behaviour of the actors involved in the EWC's interaction processes. This does not necessarily have an impact on the EWCs' 'progress' from one stage to the next; in other words, the types may be steady rather than fluid. As the authors themselves admit, this leads to difficulties in assigning real cases to the different categories, since the ideal types are not necessarily mutually exclusive: to a certain extent, this defies the logic of a 'typology'. However, notwithstanding this methodological quibble, the 'typology' or developmental trajectory developed by Lecher et al. represents the first systematic framework for the analysis of the practice of EWCs which is able to take into account the complex and interdependent relationship between the development of EWCs and the variety of 'external' and 'internal' factors impinging on this process. Their studies in particular demonstrate that the character or internal 'constitution' of EWCs is the result of the interplay between interaction processes within the EWC and the related actions of other actors (management, national representation structures and trade unions) within a specific set of (enabling or constraining) structural framework conditions.

In the late 1990s, again mirroring the demands of practice, both the analysis of the structural and operational features of EWC agreements and the case study analysis of the actual operation of EWCs were taken up and recast in the debate about the revision of EWC Directive. Since the EWC Directive stipulated the need to revise the EWC Directive by autumn 1999, this period saw a resurgence of the legal debate about potential amendments to the Directive which could draw on the findings of existing empirical research (Blanke 1999, Buschak 1999, Rigaux and Dorssemont 1999). At the time of writing in early 2005, however, the European Commission had only just

launched the consultation procedure with the European social partners regarding a possible revision of the EWC Directive.

Research into the impact of EWCs on management strategies as well as the research into the articulation between EWCs and national IR systems has remained a late developer. Most of the literature produced on the relationship between EWCs and management (Wills 1999, Nakano 1999, Weber et al. 2000) tended to perceive EWCs as a tool for improved transnational employee and trade union cooperation vis-à-vis management, but neglected the potential utilisation of EWCs by managements for their own purposes. The studies by Lamers (1998) Vitols (2003), which investigated the potential 'added value' of EWCs as perceived by management representatives, are tentative exceptions to this rule. However, it was only recently that the impact of EWCs on management decision-making was systematically investigated by Marginson et al. (2004) on a qualitative comparative basis.

Another more recent development in EWC research, and one which is still in its infancy, addresses the recent increase in the geographical scope of EWC activities. The enlargement of the EU to include ten new Member States is found to carry important implications for the structure and operation of EWCs (Kohl and Platzer 2003, Meardi 2004, Varga 2004). A further body of literature explores the role played by EWCs in the development of world-wide employee representation structures and other forms of employee-side cooperation on a global scale. (Müller and Rüb 2002, Miller 2004, Müller et al. 2004, Wills 2004).

This summary overview of over two decades of EWC research shows that one of the central challenges faced by EWCs –namely how they cope with the divisive effects of cross-border competition between sites for jobs and investment—have not been closely examined empirically. Furthermore, as will be seen below, the question of how EWCs cope with cross-site competition played a role in the context of the debate between Euro-optimists and Euro-pessimists about the impact of EWCs on the development of a European system of IR. In addition, the underlying assertion of many authors from both 'camps' was that EWCs might only be a fair-weather institution: as soon as competition between sites took hold, it would quell all cooperation.

## **2.2. The transnationalisation of companies and its implications for labour**

The last twenty years have witnessed an unprecedented intensification of economic activities on a European or even global scale. The new quality of the transnationalisation of economic activities is above all attributed to the following factors: the globalisation of financial markets, qualitative and quantitative shifts in global trade, the strong increase in foreign direct investment and the increasing

importance of transnational companies (Altvater and Mahnkopf 1996, Hoffmann 2001, Hübner 1998). A closer look at these indicators shows, however, that the transnationalisation process was mainly restricted to the triad of North America, (western) Europe and Asia (mainly Japan). Ruigrok and van Tulder (1995) thus refer to 'triadisation' rather than 'globalisation'. According to Dølvik, "the OECD countries thus account for approximately 70-80 percent of world trade and investment flows. The West European share of world trade is 43 percent, of which two-thirds are within the EU/EEA area; and in 1999 as much as 90 percent of all mergers and acquisitions took place within Europe" (Dølvik 2002: 87).

Various studies also show that with respect to companies' transnationalisation strategies it might be more appropriate to speak of europeanisation rather than globalisation. Dörre (1997) finds that most continental European companies follow an euro-centric developmental path, which is concentrated on the European single market. This finding is confirmed by Hassel et al. (2000) in their investigation of the transnationalisation strategies of the 100 largest German companies: the increasing regional spread of large German multinationals is concentrated in Europe. In the light of the specific transnationalisation patterns of European companies which, compared to the other two regions in the triad, were favoured by the high degree of economic and political integration of Europe, Marginson and Sisson (1994) already predicted the "emerging Euro-company" over ten years ago.

Following Marginson and Sisson (1994, 2004), the Euro-company contrasts with the global corporation along the following lines: the establishment of market servicing and production operations on a pan-European basis through cross-border mergers and acquisitions and the creation of joint ventures and strategic alliances across the continent; and internally through the creation or strengthening of European-level management structures which enabled MNCs to set up European-wide systems of control and coordination, thereby downgrading the role of national subsidiaries. The more widespread pursuit of common cross-border policies in internally integrated MNCs is reflected in the application of benchmarking practices, which are used to diffuse what the employers perceive as 'best practice' and to conduct cross-national coercive comparisons of performance and labour-related indicators in the context of investment decisions.

The emergence of the Euro-company had far-reaching implications for national workforces and the actors representing their interests, since the power asymmetries between capital and labour thus shifted even further in favour of the former. The Euro-companies' growing flexibility and capacity to shift production from one country to another has considerably improved their exit options, which in turn has enabled them to pursue a strategy of regime shopping, thereby putting pressure not only on trade unions and workplace employee representation structures to engage in concession

bargaining, but also on national governments, which have seen their regulatory power decrease considerably (Streeck 1998).

Even though there is as yet no clear evidence of social dumping, (Marginson and Sisson 2004: 222), the intensified competition both between and within individual companies leads to a situation in which the mere threat to relocate or to withhold investment often suffices for MNCs to extract concessions both from national unions and national governments. The MNCs “transnational power of withdrawal” (Beck 1998: 25) enables them to pit both national workforces and national governments against each other and to punish those nation states which fail to provide what the representatives of capital perceive as favourable framework conditions for investment. The same is true of the micro-level, where “under a process of ‘corporate investment bargaining’, individual sites of MNCs are under continuous threat to improve performance with the risk otherwise of being starved of investment and ultimately run down and closed” (Marginson and Sisson 2004: 223).

Against this backdrop, the establishment of EWCs, and in particular the adoption of the EWC Directive in September 1994, represented an important step towards correcting the asymmetry between the economic and social dimensions of European integration, as well as to the resulting imbalance between the strategic options of MNCs, which transcend national borders, and labour’s limited capacity to act, which was largely circumscribed by national boundaries. In providing the statutory basis for the first genuinely European institution of employee interest representation which by definition transcends the spatial confines of national IR systems, the EWC Directive’s main intention was to “bridge the gap between increasingly transnational corporate decision-making and employees’ nationally-defined information and consultation rights” (Hall 1992: 547). EWCs thus enable — at least in theory — employee representatives to deepen their cross-border cooperation in order better to address the problem of intensified competition between sites across borders within the Euro-company.

### **2.3. EWCs and the problem of company-internal competition**

While there is a broad consensus that the transnationalisation of companies results in new challenges for labour, there are very variable assessments of whether EWCs might in practice be able to contribute to an employee-side solution to the dilemma of company-internal competition. The debate about the role of EWCs and inter-site competition has mainly been held in the context of the wider debate between euro-optimists and euro-pessimists about the impact of EWCs on the development of a European system of industrial relations (Müller and Hoffmann 2001).



The Euro-pessimistic line of argument tends to be based on a structuralist approach coupled with a narrow (and arguably German-biased) conceptualisation of European industrial relations. The analytical focus of the proponents of this line of argument, such as Keller (1995 and 1996), Schulten (1996), and Streeck (1997a and 1997b), thus lies primarily on the structural framework created by the EWC Directive. Against this background, as Müller and Platzer highlight, the voluntarist nature of the EWC Directive, and in particular its “failure to harmonise employee participation rights across Europe, leads Euro-pessimists to conclude that EWCs are likely to reinforce regime competition and the emergence of micro-corporatist arrangements at European company level which eventually might set in motion a downward spiral of eroding national regulations in countries with high standards of employee representation rights” (Müller and Platzer 2003: 73).

Streeck (1996) even sees the danger that in an increasingly competitive environment, EWCs could contribute to the formation of new coalitions between central management and domestic workforces which are no longer based on common class interests of labour to seek protection against the competitive forces of free markets, but on national interests of labour to outcompete labour in other countries. Following such a euro-pessimistic logic, EWCs are likely to strengthen the existing tendencies towards competitive enterprise particularism, rather than providing a means of fostering cross-border cooperation among employees and trade unions. Hancké (2000) argues in a similar vein in his study of the role of the EWCs in industrial restructuring at General Motors and Renault. Based on the observation that local unionists used the information obtained at European level through the EWC to pursue their national or even plant-centred interests, he concludes that instead of becoming a pan-European vehicle for employee and trade union cooperation in order to combat competition, EWCs themselves become one of the major carriers of a new competition regime. According to this line of argument, the fact that EWCs merely function as extensions of their national system allows management to utilise EWCs “as a pan-European human resource institution to facilitate industrial restructuring” (Hancké 2000: 55). The study by Royle (1999) on the EWC at McDonalds provides further empirical evidence for management’s capacity to co-opt the EWC in order to prevent the development of effective employee-side cooperation.

In contrast to the euro-pessimist assessment that EWCs even undermine cross-country cooperation and solidarity, and that “EWCs are unable to override the competitive relations that are established between different sites and workplaces by many TNCs” (Martinez Lucio and Weston 2004: 36), both authors have shown that management strategies of cross-national benchmarking and cross-referencing contribute to the development of transnational employee networking structures (Martinez Lucio and Weston 1995; Weston and Martinez Lucio 1997). According to the authors, this is

because such coercive management strategies raise employee representatives' interest in engaging in cross-national exchange of information and experiences in order to fend off local management pressures.

As Martinez Lucio and Weston (2004) point out, the contradictory findings about the role of EWCs in transnational restructuring processes are unsurprising, since "EWCs are caught between distinct pressures in terms of push and pull factors between labour and capital both inside and outside the firm: there are dual pressures within these environments that both push unions towards managerial agendas and pull them towards autonomous labour ones" (Martinez Lucio and Weston 2004: 37). This means that the role of EWCs as a management tool to facilitate cross-national restructuring processes on the one hand, or as a tool to foster solidarity and cooperation among employees on the other hand, depends on the complex interplay of "*internal* transnational corporate dynamics and *external* social and political relations within labour" (Martinez Lucio and Weston 2004: 43). Both orientations exist alongside one another and can take centre stage at different points in time depending on the environmental framework conditions.

The insight that EWCs are subject to different actors' interests and expectations, whose interaction shapes EWCs' role and capacity to act, is not new. The typology developed by Lecher et al. (1998 and 1999a) depends on the dynamic interplay of four fields of interaction: interaction between EWC and management; interaction among EWC members; interaction between the EWC and national institutions of employee representation structures and the workforce; and interaction between EWC and trade unions. The key difference between the approaches of Lecher et al. and of Martinez Lucio and Weston lies in the fact that the latter see EWCs as largely externally controlled, or as they put it, as "conduits and vehicles for the action of others" (Martinez Lucio and Weston 2004: 44). In contrast, Lecher et al. grasp EWCs as independent actors who are largely masters of their own destinies in their social interaction with other actors (management, national representation structures and trade unions).

This strong actor-centred approach, which attaches great importance to the social interaction processes within the EWC and the perceptions of the EWC members, is typical of the line of argument put forward by the euro-optimists. While the euro-pessimists' negative assessment of the role of EWCs in dealing with restructuring primarily refers to structural deficiencies of the EWC Directive and the syndicalist tendencies associated with it, the euro-optimistic assessment of EWCs' impact on the europeanisation of IR more generally and the EWCs' capacity to deal with the competitive pressures of TNCs more specifically focuses on the mutually reinforcing effects of the internal development of EWCs on the one hand, and the europeanisation of trade union structures and policies on the other (Müller and Platzer 2003: 74). This is

not to suggest that euro-optimistic observers do not acknowledge the structural obstacles to the europeanisation of IR emphasised by euro-pessimists. However, the euro-optimists' analysis is based on a different frame of reference. Rather than presupposing the existence of appropriate structural framework conditions, which, from a euro-pessimistic point of view, the EWC Directive failed to create, the proponents of the euro-optimistic line of argument "tend to assess the EWCs with reference to the previously existing situation - one in which [...] no transnational rights of employee representation existed whatsoever" (Dølvik 1997: 382). Thus, Euro-optimistic analyses, such as those by Bobke and Müller (1995), Lecher and Platzter (1996), Dølvik (1997) and Lecher et al. (1998), emphasise that the structural deficiencies of the EWC Directive in failing to harmonise employee participation rights at European level are more than offset by the practical implications of the widespread establishment of EWCs, since these have considerably extended the employee-side's scope for transnational political action and cooperation.

Turner (1996), for example, argues that the adoption of the EWC Directive together with further institutional developments at European level, such as the building of the ETUC, the 1989 Social Charter, and the 1991 Social Protocol of the Maastricht Treaty, created an institutional 'superstructure' for European cross-national labour movement collaboration. Although Turner admits that the emerging European labour movement is currently characterised by the absence of collective action and is primarily based on networks of contacts and new structures of interest representation, he concludes that by encouraging a thickening web of cross-national union contacts at company, sectoral, and macro levels, institutions such as EWCs, sectoral European Industry Federations, and the ETUC create a 'political opportunity structure' which potentially paves the way for cross-national labour collaboration and collective action. This argument is supported by Dølvik (1997) and Lecher et al. (1999a), who found that the adoption of the EWC Directive prompted both European and national trade unions to adapt their organisational structures to this newly established European-level arena. At the European level, an increasing number of European Industry Federations set up 'EWC Committees' bringing together representatives of their affiliated national unions in order to facilitate the exchange of information and the coordination of strategies. Taking this approach a step further, the European Metalworkers' Federation (EMF), for example, has recently begun to set up company-specific *ad hoc* task forces to facilitate the coordination of trade union and EWC strategic responses to restructuring. Lecher et al. (1999a) report that national trade unions simultaneously began to integrate European agendas into their day-to-day work. Besides strengthening their international/European departments, more and more trade unions have set up cross-departmental task forces to deal with European issues. In some cases these innovations took a clearly institutionalised character, as the EWC Project (later made permanent as

the EWC Team) at the German IG Metall union demonstrates (Götz and Buchholz, 1996; Lecher et al., 1999a).

However, the EWCs' potential to strengthen cross-national trade union cooperation is not limited to structural processes. Perhaps even more important is their potential to 'Europeanise' the underlying mindset of trade union activists. Dølvik for example makes the point that the sheer number of national employee representatives who will be involved in EWCs and transnational union activities "contains a potential for learning and change which should not be underestimated" (1997: 388). He even sees the possibility that EWCs may contribute to the emergence of a new "pioneer core of workforce representatives at the level of TNC headquarters" who are more outward-looking and more familiar with the problem of coping with cross-national diversity, which in turn "can represent a valuable potential for the development of trade union networks and structures within the context of company EWCs" (Dølvik, 1997: 389).

This line of argument is exemplary for the Euro-optimistic way of reasoning, because, although the respective authors acknowledge the structural obstacles to a europeanisation of labour, they emphasise the scope for political action and social choice of labour organisations which was created by the institutional reforms in the wake of attempts to strengthen the European social dimension. This line of argument is furthermore typical for a Euro-optimistic perspective in terms of the underlying developmental logic of a europeanisation of IR, because it implies that this process follows the logic of spill-over effects from market integration to social integration as national actors re-define their political strategies and increasingly turn their attention to the newly established institutions at the European level.

The debate between euro-optimists and euro-pessimists about the impact of EWCs on the europeanisation of IR more generally, and the role of EWCs faced with intensified internal competition specifically, remains highly speculative and shaped by different normative frames of reference, which lead the proponents of both lines of argument to diametrically opposed conclusions. The existing empirical evidence does not help much further either, since both camps can find examples in support of their particular position.

Is it thus in the eye of the beholder whether the glass is half full or half empty? Not quite, because despite the inconsistent picture which case study research paints of EWC practice, there is one central factor which decisively shapes the development of EWCs: the development of social cohesion and a 'European identity' within the EWC. It has been seen that in those cases in which EWCs were primarily (mis)used to pursue national or local interests as well as in those cases in which the EWC was (mis)used as an HR tool, the EWCs only exhibited a very small degree of social cohesion. At the same time, those EWCs which successfully developed and maintained a solidary

approach to restructuring measures were shaped by a high degree of internal cohesion, which enabled them to aggregate differing interests and to formulate a common position and approach vis-à-vis management. If 'internal cohesion' and the development of a European identity is a central prerequisite for the EWC's ability to cooperatively resolve conflicts, then the question arises under which conditions can internal cohesion and a European identity be developed?

#### **2.4. Internal cohesion and European identity: fostering EWCs' effectiveness**

Although a range of contributions to the body of EWC literature have focused on the meaning of internal cohesion for the development of effective employee-side cooperation within and through EWCs<sup>3</sup>, most of them remain fairly vague about the real meaning and foundation for internal cohesion. Most contributions stop at the identification of factors which inhibit the generation of internal cohesion and a European identity. Exceptions to this tendency are the studies by Lecher et al. (1998), Miller (1999) and Stirling and Tully (2004), who, in contrast to many other empirical studies about the effectiveness of EWCs, develop a clear conception of an 'effective' EWC. According to these three studies, an effective EWC is able to internally aggregate different interests and develop an independent, participative capacity to act outwards, which enables it, for example, to exert influence on management decisions and their implementation. The basis for an effective EWC in this sense is the development of internal cohesion, which in turn depends upon the development of a collective European identity. According to Miller (1999), such a European identity is marked by the development of a new overarching set of mutually shared transnational values and practices that transcends national interests. Following Hyman's conception of trade union identity, an EWC's European identity represents the collectively shared perceptions and views of the EWC's underlying purpose, its priority objectives, and the appropriate forms of action (Hyman 1994 and 2001). A prerequisite for the development of such a mutually shared European identity is that existing differences are not suppressed, but instead accepted and taken up. Martinez Lucio and Weston (2004: 44) and Miller (1999) have called for a reconceptualisation of solidarity with respect to EWCs. This new understanding should no longer orient itself towards Durkheim's concept of mechanical solidarity, which relies on the imposition of a certain approach via hierarchical structures, but should orient itself towards the model of organic solidarity, which leaves room for divergent interests within social interaction processes and is open-ended.

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<sup>3</sup> See for example Fulton (1995), Lamers (1998), Veersma (1999), Wills (2000).

How can a European identity as a foundation for social cohesion be developed? According to Lecher et al., “in building internal strength and cohesion [...] three dimensions will play a crucial role: the communicative, the socio-cultural and the institutional” (1999b: 81). With respect to the communicative dimension, several authors (Fulton 1995, Lamers 1998, Lecher et al. 1998, Miller et al. 2000) emphasise language barriers as one major obstacle to the development of internal cohesion. Lecher et al. (1998) and Miller et al. (2000) point out that language barriers not only hinder informal contact and the development of mutual trust, but that they can also lead to the formation of sub-groupings within EWCs. Such fragmentation can foster the development or the maintenance of national parochialisms and egoisms. Jaeger (1996) notes that the pursuit of site-specific interests is not a new phenomenon. Within national multi-site institutions such as German *Konzernbetriebsräte* or French *comités de groupe* these same tendencies can often be observed. He emphasises, however, that the problem of pursuing particularistic interests within the EWC is exacerbated by communication barriers between EWC members. Miller et al. (2000) and Stirling and Tully (2004) point out that communication is a means of exercising power and control within social interaction processes, which must be taken into account in the development of internal communication structures. In order to overcome communication barriers within EWCs by ensuring the greatest possible transparency, Lecher et al. (1998: 232) suggest that the task of disseminating information be given to a group of actors within the EWC, such as the select committee. Beyond this, procedural rules for the information of EWC members should be agreed upon.

Closely linked to the problem of communication is the second dimension identified by Lecher et al. as important to the development of internal cohesion: socio-cultural differences. A central problem here are the differing national political and cultural backgrounds of the EWC delegates, who in most cases have not been exposed to a situation in which they had to perform as employee representative in a multi-cultural setting (Jaeger 1996, Lamers 1998, Miller and Stirling 1998, Lecher et al. 1999, Miller 1999, Stirling and Tully 2004). Their understanding of their role as EWC delegate is heavily influenced by their national IR context and the interests they pursue therein as employee representatives and/or trade unionists. However, the development of internal cohesion is not only hampered by the different nationally pre-defined role perceptions and interests of the EWC representatives, but also by the different ways in which they try to pursue these interests, because, as Lecher et al. point out, “different national IR systems are marked by differing styles of politics” (1999: 222). The insufficient knowledge of different national IR backgrounds and national frames of reference can lead to misunderstandings, conflicts, and factionalism within the EWC (Lamers, 1998; Miller and Stirling, 1998; Lecher et al., 1999).

Several authors (Gohde, 1995; Jaeger, 1996; Harazim, 1998; Miller and Stirling, 1998; Miller, 1999; Fitzgerald et al., 2000, Stirling and Tully 2004) have brought attention to the central role which training can play in overcoming communication and socio-cultural barriers. Based on the assumption that the development of EWC-internal cohesion is the product of communication-based interaction processes among EWC members who are aware of each other's different socio-cultural backgrounds (Lecher et al., 1998; Miller and Stirling, 1998; Miller, 1999), the various authors set out to develop a training agenda for EWC delegates. The main function of training in the EWCs' development of a distinct role is to prepare the EWC members for the challenges posed by the multicultural and multi-lingual environment of an EWC. In order to achieve this aim, Miller even calls for a new "pedagogy of transnationality" (1999: 356) to shape the content, method and the organisation of delivery of training. Against this backdrop, different training components have been identified, which can be broadly grouped into two categories: issue-related qualifications and individual qualifications (Harazim, 1998). Whereas the former set of qualifications covers basic knowledge about the different national IR systems and collective bargaining arrangements, the legal background of the EWCD, and the broader economic context in which EWCs operate, the individual qualifications comprise communication and conflict resolution skills, which facilitate the aggregation of potentially differing interests within EWCs (Gohde, 1995; Harazim, 1998; Miller and Stirling, 1998).

Significantly less attention has been paid to the internal institutional prerequisites for the development of internal cohesion. Lecher et al. (1998) emphasise the positive contribution which trust-building measures by the representatives from the dominant country and institutional arrangements to ensure transparency and active participation can have on the development of social cohesion. Specifically, they mention the positive effect observed if the dominant group conspicuously takes a step back and forgoes dominant positions, or actively supports other EWC members vis-à-vis central management in conflict situations. Further institutional measures to reduce or downplay power asymmetries include a flat representation structure, the establishment of a steering committee to put leadership, operational and decision-making structures on a broader international footing, or setting up issue-specific working groups, in order to allow more members to become actively involved in the work of the EWC.

This overview of the EWC literature which is relevant to the central question of this thesis about the role of EWCs and cross-site competition yields something of a paradox. While euro-pessimists explicitly address the question of cross-border competition but exclude *a priori* a positive role for EWCs because of external framework conditions and disregard the EWC-internal social processes, the euro-optimistic contributions, which put EWCs as social actors at the centre of their analysis,

stop short of explicitly addressing the question of cross-site competition. The latter contributions examine the possibilities and conditions for the generation of internal cohesion, but the question is left open whether this also suffices as a means to overcome cross-site competition. It is the aim of this study to close this gap.

## **2.5. What is known about central and group works councils?**

Across Europe, centralised instances of employee representation which bring together representatives from various plants or workplaces within a firm, have presumably long had to deal with these issues of plant egoism and competing particularistic interests, albeit within very different industrial relations systems.

A review of literature on the phenomenon of collective interest representation in general and on central works councils in particular reveals that very little is known about the process of interest aggregation within central works councils. With two exceptions, it is not addressed in specialised texts, is skirted in more generalist texts and only appears in any detail in some narrative texts.

A great deal of the existing literature about central and group works councils focuses on legal advice or analysis of the *Betriebsverfassungsgesetz*, the German law regulating company-level codetermination. There are elaborate investigations of the legal intricacies of central works councils, such as that contributed by Grotkamp (1998) and overviews of court rulings on the complicated question of the CWC's ability to act on behalf of the local works councils (Kunz 2003a). In 1993, the Hans-Böckler-Foundation published an explication of the various company law forms regulating groups of companies and their implications for cross-site employee representation (HBS 2003). With respect to the function of central or group works councils, the authors merely conclude that the German *Betriebsverfassungsgesetz* does not adequately capture the variety of actual company structures and that a wide range of alternatives have been developed in practice. But despite its title, which explicitly refers to "employee interests", there is no mention of the politics or mediation involved in central works council activity (HBS 1993).

Regular publications aimed at practitioners (chiefly works council members and labour lawyers) clarify questions such as how to set up a central works council and what its competences are (Grimberg and Peter 1999, Kunz 2000), how to implement the provisions on reducing the size of the central works council (Mengel 2002), whether and how the central works council is competent to negotiate a social plan in the event of collective redundancies (Betriebsberater 2002), delegation to the CWC (Löwisch 2002), setting up a group works council based on the revised *Betriebsverfassungsgesetz*



(Fischer 2001) and even whether or not it is possible to set up a central works council if there is only one local works council currently in place (Helm and Müller 2001). Nearly every German trade union offers handbooks or guidelines which outline the legal prerequisites of central and group works councils, but these refrain from offering any guidance on what role they play in the larger scheme of works councils' or trade unions' policy or strategy at the company level (for the IG Metall, see Kunz 1998 and Kunz 2003b).

While the famously juridified nature of German IR might explain this preponderance of legal analysis, it is striking that without exception, none of these contributions go beyond mentioning in passing the need to coordinate works council policy and strategy across sites.

There is, of course, a wealth of literature on local works councils, but this body of literature chiefly focuses on works councils' interaction with management, their approach to issues such as health and safety, training, or group work, or their uneasy relationship with trade unions; scant attention is paid to the specific challenges of cross-site interest representation. In her *Critical Assessment of the Theoretical and Empirical Research on German Works Councils*, which aims to take stock of what we know about works councils, their roles, activities and values, Frege (2002) does not mention central and group works councils at all. An extensive review of the social science literature about the German *Betriebsverfassungsgesetz* published by the Hans-Böckler-Foundation in 1994 (Höland and Eidmann 1994) does briefly summarise the results of Rancke's extensive study on cross-site employee participation (Rancke 1982, see below). The authors only take up one of his conclusions, however: that the German works council legislation fails to accommodate the actual needs of practice in the light of simultaneous centralisation and decentralisation of companies. Apparently, the particular challenges confronted by works councils in navigating between different levels of central and local competence, which Rancke explicitly highlights, was not judged to be relevant enough to be included in the otherwise wide-ranging theses about the sociological and political implications of company-level workers' participation with which the authors conclude their study. This finding is, however, cross-referenced to possible responses to the erosion of the local level and the perceived need to develop adequate cooperation between works councils, such as within company networks – a theme which can also be found in the contributions of Wassermann (2003) and Müller-Jentsch (2003).

## **Works councils and changing management structures**

There is a nearly universal consensus in more recent literature on German IR that the centripetal and centrifugal effects of fragmentation and centralisation of company structures pose new challenges for works councils and trade unions (Rancke 1982, Nagel et al. 1994, Müller-Jentsch 2003, Wassermann 2003).

It would seem that central and group works councils would occupy pride of place in such a debate. And yet, in his contribution on trade union policy and works council practice at the company level to a recent stocktaking exercise on trade unions and IR in Germany (Schroeder and Wessels 2003), Wassermann (2003) barely mentions the existence of central and group works councils and instead argues that works councils and trade unions need to develop possibilities to develop adequate responses to newly emerging cross-company networks, such as those which exist between original manufacturers and their suppliers. The rationale is that since personnel and technology issues are often closely coordinated on the management side, particularly if the supplier is an outsourced part of the original manufacturer, then works councils need to develop ways to coordinate their activities with the works councils at partner companies.

In his contribution, Müller-Jentsch (2003) similarly omits the centralised level of codetermination at the company level entirely, leaping instead from the local level to cross-company networks. In an extended analysis of codetermination, which includes an otherwise thorough discussion of theory and practice of work councils, he fails to even mention central and group works councils. Under the heading of “new problem areas”, however, along with the so-called ‘new economy’ and the emergent European level, he echoes Wassermann in briefly highlighting the need to develop adequate responses to cross-company networks.

In his comparative case-study research on works councils in fragmented companies, Wassermann (2002) analyses the experience of several companies drawn from sectors such as construction or retail, in which small sites face greater legal and practical obstacles in making use of the options for local and cross-site works councils. As a consequence of this research focus, Wassermann (2002) only mentions central works councils and group works councils in passing. His assessment of the opportunities and challenges of adapting works councils to eroding and shifting company structures relies on highly case-specific examples of the ways in which alternative structures and processes can be set up. Unfortunately for present purposes, however, Wassermann assumes a pressing need for cooperation among employee representatives from

different sites without exploring why this is the case or what obstacles such efforts to cooperate might face.

### Central Works Councils

The last large-scale investigation of central and group works councils in Germany was conducted nearly thirty years ago. Rancke (1982) presents the results of a study of the roughly 800 German companies which employed over 2000 employees at the time<sup>4</sup>. Prompted by the 1972 amendment of the German *Betriebsverfassungsgesetz*, the research, conducted from 1975-77, sought to take stock of the ways in which this legislation was actually applied in practice. The research was based on interviews, non-participant observation conducted in four companies in four different sectors, and a postal survey,. The response rate to the 62-page survey containing over 240 questions was understandably low (just over 15%) but the questionnaires returned by 99 central works council chairpersons provides a useful empirical base.

Rancke concludes that overall, the *Betriebsverfassungsgesetz* does not adequately capture the fragmented and dynamic character of company structures; if the intention of the works council legislation was to enable employee representatives to exert influence on company decision-making across all levels of the company or group of companies, then its static definition of company structures, which does not take into account 'new' developments such as divisionalisation, line management, or profit centres, etc. fails to achieve this. Noting the widespread and significant departures from the legally foreseen structures and processes, however, and despite his concern for the resulting legal uncertainties in practice, Rancke concludes that the *Betriebsverfassungsgesetz* does leave significant room for individual actors to adapt it to their needs (1982: 336). In other words, despite the strong legal emphasis of his analysis, Rancke's findings suggest that this room for manoeuvre and adaptation provides primarily political, not legal opportunities.

Rancke's findings shed valuable light on the important role played by central works councils in practice. Indeed, in Rancke's assessment, central works councils, and in particular their executive committees, are clearly the "single most important employee committee" in the whole works council system; they are "in fact the control centre of

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<sup>4</sup> Companies in the coal and steel industries were excluded, since these applied the specific parity co-determination regulations of the *Montanmitbestimmungsgesetz*.

codetermination" (1982: 157-8)<sup>5</sup>. He attributes this eminent role of the central works council's executive committees to three factors: first, the concentration of power and authority, which can for example be seen in the frequency with which central works council chairpersons are at the same time chairpersons of the largest local works council (68%), as well as, where they exist, of the group works council (52%), and are members of the company's supervisory board (61%); second, the fact that nearly all formal and informal information channels between central management and the local works councils and workforces originate or terminate in the central works committee; and third, the high frequency with which central works committees are granted the authority to take decisions independently, which, taken together with the sum of the first two factors, means that they are a counterpart to central management to be reckoned with at the key level at which issues of true importance are taken. Rancke points out that though this may result in the marginalisation of the works council members at individual sites, this marginalisation seems to be on the whole accepted – despite the inevitable conflicts – as long as, on the whole, successes can be secured on behalf of the employee representatives. (1982: 162).

With respect to the regulatory activities of central works councils, Rancke reveals a large gap between what the law intended and the reality of practice. Indeed, Rancke concludes that despite the strict subsidiarity laid down by the *Betriebsverfassungsgesetz*, local works councils' participation in regulatory processes lags significantly behind that of the central works council (1982: 355).

### **Group Works Councils**

Rancke finds moreover, that group works councils, i.e., works councils that bring together peak-level employee representatives within groups of companies, are largely without function. According to Rancke, they serve primarily as forum for the exchange of information among employee representatives and as a source of information from group-level management. As the key explanation for group works councils' "widespread *de facto* lack of a function" (1982: 184) Rancke suggests that since the central works council already wields strong influence at the key locus decision-making at the company level, whether or not these issues originate within the company or the group, there is little practical or political necessity to call upon the group works council as a "higher level".

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<sup>5</sup> Unless otherwise indicated, all translations into English from German-language sources are mine.

Nagel et al. (1994), the only other researchers to have focussed on centralised instances of employee representation, come to similar conclusions about the limited regulatory capacity of group works councils (GWC). Taking a similar starting point to Rancke's a decade earlier, Nagel et al. set out to examine the ways in which the German works council legislation functions in practice. Drawing on six company case studies, Nagel et al. echo Rancke's findings that the need to adapt a rigid and short-sighted conception of company structures to the realities of 'modern' companies has given rise to a great variety of formal and informal works council structures within groups of companies. Where Rancke sees a proliferation of alternative forms, Nagel et al. identify two basic forms of adaptation: the first is to develop an encompassing system of multi-level works councils which is congruent with management structures at all levels, albeit at the risk that their agendas will be watered down; the second is to "strategically reduce" the group works council structure to that management level at which issues of overarching relevance are decided within any given company (1994: 215).

Nagel et al. identify a wide variation in the depth and nature of GWC activity. Most GWCs serve primarily as an information 'clearing house': they obtain, analyse and transfer information from the top level to lower levels of the company. A few GWCs, however, also aim to provide a service to local works councils, for example by drafting template agreements on common issues for further negotiation and implementation at the local level. The GWC's ability to take on a more operative role, however, depends on the willingness of lower levels to accord them such a role. According to Nagel et al., the extent and nature of GWCs' activities depends largely on the company's codetermination traditions and culture, as well as on its own perception of its role, particularly as it is shaped by its chairperson and its executive committee. The authors describe the alternatives as follows: either the GWC is seen as a lamp which can be switched on and off at will by the local works councils when they need it – in this sense, the GWCs is only the sum of its parts. Alternatively, the GWC can develop into an institution with its own weight and capacity to act – in other words, it can be more than the sum of its parts.

In the light of Rancke's finding of the pre-eminent role played by central works councils, it is striking that Nagel et al. hardly mention central works councils at all, even though several of their case study companies do have central works councils in place. Instead, they focus on the relationship between local works councils and group works councils, without considering what might be happening at the intermediate – and as Rancke found – more operatively and strategically important level.

## **Central and Group Works Councils as arenas for the mediation among local interests**

With the limitation that there are simply fewer issues of substance that are dealt with by group works councils, Nagel et al. do set out to investigate the ways in which the diverse needs and constraints of individual sites can be aggregated and balanced. These speculations suggest some important leads for the more detailed investigation of how central works councils function in practice which is the subject of the present research.

Among the research hypotheses which originally informed their research were three which explicitly take up the question of balancing the different interests of the individual sites. First, the authors hypothesised that the GWC has the legal potential and resources to represent fragmented workforce interests across the group. On this basis the GWC can take on an important integrating function by ensuring a uniform representation vis-à-vis central group management. Second, the GWC runs the risk of being caught between the interests of the local works councils and central management. Peak-level employee interest representation thus amounts to a tightrope walk: how far can the GWC enter into compromises with central management without being accused of betraying the interests of local workforces? Third, Nagel et al. postulated a strategic function for the GWC: as the counterpart to central group management, the GWC must balance the wide range of individual employees' interests and develop a negotiating position towards central group management which is not simply grounded in dominant interests but which can also incorporate particularistic interests (1982: 58-9).

Unfortunately, the authors do not revisit these hypotheses, except to conclude that the strength of the GWC depends on the existing power relationships within the GWC which often mirror those within the company: larger sites will tend to dominate the group, although the existence of the GWC provides smaller sites with an important forum in which to air their particular concerns and to address group management directly. The authors also point out that the GWC tends to rate its own importance and influence higher than do its constituent works councils.

## **The elusive importance of coordination**

Rancke (1982) finds that a range of issue-specific subcommittees which focus on, for example, remuneration principles, health and safety, or vocational training exist at both the central and local levels. Pointing to the parallel existence of formal and

informal processes and substructures in central works councils, Rancke concludes that in principle, central works councils deal with “all issues of any importance” (1982: 163).

Having established that central and local works councils deal with many of the same subject matters, Rancke’s quantitative data unfortunately only yields few indications of how the approach to such common or overarching issues is shuttled between the central and local levels. On the basis of an elaborate discussion of the principle of subsidiarity in the *Betriebsverfassungsgesetz*, Rancke concludes that while there may be an intention or even a desire within the central works council to decide certain issues jointly – and indeed while there may even be a compelling practical necessity to do so – the distribution of authority which underpins the *Betriebsverfassungsgesetz* essentially forbids this. It is here that Rancke’s primarily legal analysis of the distribution of authority in practice reaches its limits, but it opens the door for the present analysis: if, despite the limitations of the legal framework, central works councils are demonstrably active in the whole range of issues subject to codetermination, then the focal questions must be: on what issues, how and why?

Rancke identified this seemingly ubiquitous activity of central works councils nearly three decades ago; it is all the more surprising, therefore, that the regular large-scale surveys of works councils which are conducted by the Hans-Böckler-Foundation/WSI do not address the range of issues that are dealt with by central works councils. In fact, they do not contain any questions about central or group works councils at all. In these regular surveys, works council members are asked which codetermination issues are most prominent in their works councils. (For the most recent results, see Schäfer 2003.) The top three issues which local works council members identify – early retirement, collective redundancies, and health and safety – are also known to figure large on the agendas of central works councils. Anecdotal evidence from practice also suggests that other issues noted by the respondents, such as the introduction of new technologies or forms of work, outsourcing or closures of establishments or parts of establishments, and reductions in bonus payments are also regularly dealt with in central works councils. On basis of the currently available empirical data, therefore, there is no way to assess the spread or nature of central works council approaches to these issues.

From Nagel et al.’s findings, it can be concluded that group works councils’ position as peak-level employee representation is volatile. Pointing out that GWCs are essentially horizontal, rather than vertical structures, which are, moreover, far removed from the local works councils, Nagel et al. argue that in establishing their own specific chain of legitimization, GWCs are confronted with a dilemma: if the GWC is seen to be ‘too active’, then the local works councils fear that it will dictate policy and hinder their work. If the GWC is seen to be ‘too quiet’, however, local works councils will suspect it

of having conceded too much to central management (1994: 14). Nagel et al. conclude that the GWC's legal competences are not the decisive factor in determining its power resources; rather, the GWC is embedded into a complex regulatory system, in which informal behavioural norms are as effective as are legal norms. Thus, Nagel et al.'s findings point to an intriguing conclusion: arguably, its actual legal competences are so limited that the GWC needs to adapt its structures and processes in order to be able to demonstrate the legitimacy of its actions towards its constituent central and local works councils.

### **Clues from practice**

While the impression that central and group works councils have disappeared off the academic radar screen seems inescapable, indications from practice suggest that the challenge of mediating between the constraints and opportunities of different sites is an issue of some concern.

As early as 1986, the Chairman of the Volkswagen Central Works Council suggested that in order to better respond to sweeping changes in work organisation and working time, the works councils would have to intensify their efforts to address these not simply at the local level, but across sites (IG Metall 1986). Publications in mainstream practitioners' journals highlight the fact that due to the close integration of production processes across sites, central works councils increasingly address issues such as employment security (Kempe 1998) and outsourcing (Lieb 1996).

In 1998, the German metalworkers' union IG Metall launched a series of seminars designed to support their national-level CWC and GWC advisors. These seminars addressed the ways in which central works councils were increasingly confronted by intra-company coercive comparisons, structural changes in management processes which resulted in increased centralisation in some areas and fragmentation in others, and the need to accommodate these processes within a rigid legal structure and regionalised collective bargaining structures. Shortcomings in the national-level advising of central works councils in the IG Metall craft section, particularly in automotive repair companies, were identified in 1999; the IG Metall was urged to take active steps towards coordinating its activities at the company-level across the country, in order to actively prevent branches of the same company from being played against one another, to strive towards uniform regulations, and to ensure that all local sites have access to relevant information.



To sum up, and as the Chairman of the Central Works Council at Ford unambiguously described the central challenge – and the possible solution:

“With its comparative analyses of unit costs across the company’s own sites, Ford management have given competition within the company new impulses and meaning. And so it requires an ongoing and cautious coordination among the works councils of the German sites, in order to ensure that the legitimate efforts of individual local works councils to protect jobs does not result in a battle of everyone against everyone.

This already difficult task becomes even more complicated when foreign sites are included in these competitive comparisons. Up to now, international cooperation among employee representatives at the European Ford sites, which has mainly taken place under the auspices of the International Metalworkers’ Federation in Geneva as well as the EMF in Brussels, has been satisfactory.

It is evident, however, that the variety of shared problems requires an ongoing coordination similar to [that practiced in] the central works council. Here the questions of uniform safety standards, the development of common approaches to the definition of working time or production schedules, and the prevention of transfers of orders in the case of industrial conflict should be highlighted.” (quoted in IG Metall 1990: 62).

It is precisely this proposition which this research seeks to explore.

## Chapter Three: Key analytical issues – Federalism, Democracy and Solidarity

### 3.1. Introduction

It has been suggested that EWCs will never be able to overcome the competitive relations between sites and workplaces (Streeck 1996, Hancké 2000, Martinez Lucio and Weston (2004). Yet this is precisely what Central Works Councils in Germany are designed to do. In the absence of existing research about how central works councils actually function, this thesis therefore sets out to investigate the practical workings of a particularly integrative central works council in order to identify the lessons to be learned for the perspective of solidarity within EWCs.

Based on a discussion of the meaning of solidarity as well as different types of solidarity, the need for a pluralist conception of solidarity which can be achieved by means of discursive and participative structures is identified. Rather than attempting to impose a hierarchical and monolithic concept of solidarity, this approach takes (potentially) diverging interests as the very basis for solidarity.

Implicitly, this approach applies to single groups of individuals. The process of generating solidarity is arguably more complicated if it is to take place across different levels involving different constellations of actors who have access to different amounts and kinds of information, and who are furthermore charged with representing the interests of further groups of individuals.

It is here that federalism provides the means to grasp the ways in which collective opinion-forming and decision-making can be achieved across a multi-level system. In other words, federalist political orders, which are conceived as a means of reconciling unity with diversity, can provide the framework for discursive-participative processes cast against a backdrop of shared values and objectives. Casting the multi-level system of interest representation as laid out in the German *Betriebsverfassungsgesetz* (*BetrVG*: Works Constitution Act) as a federalist political order, and focussing on the central works council as the closest available analogue to a European Works Council, this chapter seeks to identify the key analytical issues which are needed to explain the way the CWC — and by analogy an EWC — can generate solidarity.

The case study of the Central Works Council at DaimlerChrysler which follows in Chapter Five will explore how such an essentially federalist and pluralist system of

multi-level employee interest representation functions in practice to generate and affirm a fundamental willingness to exercise solidarity. The final chapters will explore the implications of these findings for the perspective of solidarity in European Works Councils.

The role of this chapter, then, is to explain how the federalist organisational character of the CWC makes a reliance on negotiated consensus rather than imposed conformity its only option. The broad principles of solidarity as a collective interest are developed and applied to the context of cross-site and cross-country multi-level interest representation. The constraints and opportunities provided by a federalist political order represent the key prerequisites and conditions which shape the ability and willingness to exercise solidarity across sites — and, indeed, across countries.

Federalist theory allows us to illuminate the ways in which different levels combine to accommodate both unity and diversity. Key tenets of federalism allow us to conceptualise both divided and shared sovereignty within a central works council.

This chapter therefore seeks to cast the multi-level system of interest representation at company level as it is prescribed by the German *Betriebsverfassungsgesetz* (*BetrVG*: Works Constitution Act) as a federalist political order. Cast in federalist terms, the multi-level system of interest representation at company level consists of three orders of “government”: the local works council, the central works council, and the group works council.

This chapter will explore the ways in which the multi-level system of interest representation as it is laid out in the *BetrVG* can be understood to be a federalist system which provides means to accommodate both unity and diversity. The implications of democratic theory, in particular the contributions of notions of consociational democracy, will be linked to the primarily organisational and policy-oriented characteristics of federalism. Finally, the relationship between federalism, democracy and solidarity will be explored.

### **3.2. Multi-level systems of employee representation**

In complex companies which operate across several sites, multi-level systems of company-level workplace participation can be the most appropriate counterpart to the corresponding managerial structures. From the local level to the European or even global level, each level can build upon the one below it and thus enable interaction between management and employee representatives at and across different levels of the same company or group of companies.

Most European countries have provided for multi-level institutional arrangements for employee interest representation at the company level to match the multi-level structures of companies. The German *BetrVG* provides for a particularly elaborate and comprehensive such multi-level system.

With respect to European Works Councils in particular, the system can be conceived as potentially representing a peak-level institution of employee representation which build upon lower-level institutions of employee representation, be they *Betriebsräte*, *comités d'entreprises*, or shop stewards committees. However, the existence of such substructures at the national level, and particularly their institutional and political connection to the EWC as its constituents, is the crucial prerequisite for the EWC's ability to function as a peak-level institution which integrates national systems of industrial relations.

Chapter Six will explore in more detail whether and how European Works Councils can be integrated into such a federal conception of employee interest representation. In order to provide a foundation for this concluding analysis, this chapter will set the stage for the case study of the Central Works Council at DaimlerChrysler, in which the relationship between the two orders of local and central works councils is isolated in order to investigate how the multi-level system of interest representation functions in practice.

### **3.3. The contribution of theories of federalism**

Federalist theories have been developed to examine the prerequisites for and workings of governance systems that span more than one level of government. Federalism provides a constitutional language which is well suited to grasp both the structures and dynamics of such multi-tiered institutional arrangements for company-level employee participation.

The resemblance between multi-tiered systems of interest representation and federal governance structures is more than structural. The same questions that are raised by federal theory also arise in the context of industrial relations: how do levels interact? How do actors act within those systems? How are unity and diversity reconciled?

Building upon a brief introduction to federalist theory, the following section will explore the ways in which the key tenets of federalist theory can be applied to multi-level systems of workplace employee participation. Using the institutional framework laid out in the German *BetrVG*, it will be demonstrated that the German system of workplace interest representation clearly amounts to a federal political order.

It is important to bear in mind that this section focuses mainly on the ground rules defining the federal political order, rather than its actual practice. What little empirical evidence is available indicates that the ways in which these frameworks are filled out in practice varies widely across German companies according to the preferences and priorities of the actors involved.

### **What is Federalism?**

According to Watts (1991) a federal system is

a form of territorial political organisation in which unity and regional diversity are accommodated within a single political system by distributing power among general and regional governments in a manner constitutionally safeguarding the existence and authority of each. Distinctive features are the distribution of authority between at least two levels of government and the coexistence of unity and regional diversity (Watts 1991: 228).

The need for a useful definition of federalism has given rise to a wide-ranging scholarly debate. On the one hand, it is possible to define federalism as any form of shared government which lies between the two extremes of unitary government and a loose linkage between states. Rather than developing a broad, encompassing definition of federalism, Wheare (1946) advocates a restricted definition of the term "Federalism". According to Watts (1991),

This approach identifies the concept that neither the central nor the regional order of government should be legally or politically subordinate to the other as the basic federal principle (...) Federalism is viewed as a compromise between extreme concentrations of power and loose confederacies. It makes possible the combination of effective central powers for handling common problems with the preservation of regional autonomy and distinctiveness. Federal political systems so conceived are not hierarchical systems of decentralisation but non-centralised systems in which authority is diffused among independent but interacting centres. Both independence and interdependence, and both rivalry and cooperation, characterise relations between general and regional governments within federations (Watts 1991: 228).

Arguing that such a restricted definition of federalism results in the exclusion of many variants that would shed light onto the sliding scale between extreme centralisation and extreme decentralisation which are apparent in the actual workings of federalist

systems, Riker (1993) has advocated a more inclusive definition. According to Riker, “federalism is a political organisation in which the activities of government are decided between regional governments and central government in such a way that each kind of government has some activities on which it makes final decisions” (1993).

In other words, if the objective is to achieve the widest possible range of empirical comparisons in order to generate a robust theoretical grounding for an understanding of federalism, a more inclusive definition of federalism may be more appropriate. The aim of this section, however, is not to compare, but rather to cast the existing multi-level system of employee interest representation as it is specifically laid out in the Works Constitution Act as a federalist political order. Because a restrictive definition is more specific and definitive, it is therefore analytically more useful to rely on the restrictive definition put forward by Watts.

#### **3.4. A multi-tiered system of works councils as laid out in the BetrVG**

German law provides for participation and codetermination rights for employees at both the workplace level (*betriebliche Mitbestimmung*) and in the supervisory boards of companies (*Unternehmensmitbestimmung*).

The Works Constitution Act (*BetrVG*) provides for the establishment of a tiered system of works councils at all levels of the company. The first Works Constitution Act was enacted in 1952, it was revised in 1972, and it was most recently revised in 2001. The German *BetrVG* lays out the rules governing cooperation between the employer, the workforce, the works council, the trade unions and the employers’ associations. The following section will focus exclusively on the rules governing workplace employee representation.

### *The local works council (Betriebsrat)*

The *BetrVG* provides for the election of works councils in any establishment of private industry with at least five employees with voting rights<sup>6</sup>. The size of the works council increases with the total number of employees.

### *The Central Works Council (Gesamtbetriebsrat)*

A central works council (CWC) must be established within any company with two or more establishments which have set up works councils.

### *The Group Works Council (Konzernbetriebsrat)*

In groups of companies, a Group Works Council (GWC) can be established to cover all companies belonging to the group if the works councils representing at least 50% of the group's total workforce so request. Until the reform of the *BetrVG* in 2001, this threshold was set at 75% of the total workforce.

Works councils set up on the basis of the *BetrVG* meet as necessary. As a rule, local works councils meet weekly or bi-weekly. The *BetrVG* only specifies that management must meet with the local works council at least once per month. The frequency of Central and Group Works Councils meetings has never been systematically investigated. However, anecdotal evidence suggests a wide variation. Some Central Works Councils, such as that at DaimlerChrysler, meet 10 times per year; others, such as that at Bosch, meet in plenary only three times per year, although its central Works Committee meets 10 times per year. Some Group Works Councils meet only twice per year.

### **Annual works council assembly**

Section 53 of the *BetrVG* requires that at least once per calendar year, an annual assembly of all the executive committees of all the local works councils be convened. Local works councils are free to delegate other members, provided that the number of delegates does not exceed the number of executive committee members who could be delegated.

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<sup>6</sup> Eligibility to vote is closely defined in the *BetrVG*, and includes such requirements as a minimum age of 18, and at least three months' employment with the company (e.g., this also includes temporary workers).

At this meeting, the Central Works Council is to report on its activities. The employer is also required to report on

staff questions and social affairs in the company, including the status of equality between women and men and the integration of the foreign employees working in the establishment, the financial position of and trends in the establishment, and on environmental protection in the establishment, in as far as there is no risk of a disclosure of trade or business secrets. (Section 53 (2)<sup>2</sup> BetrVG 2001)<sup>7</sup>

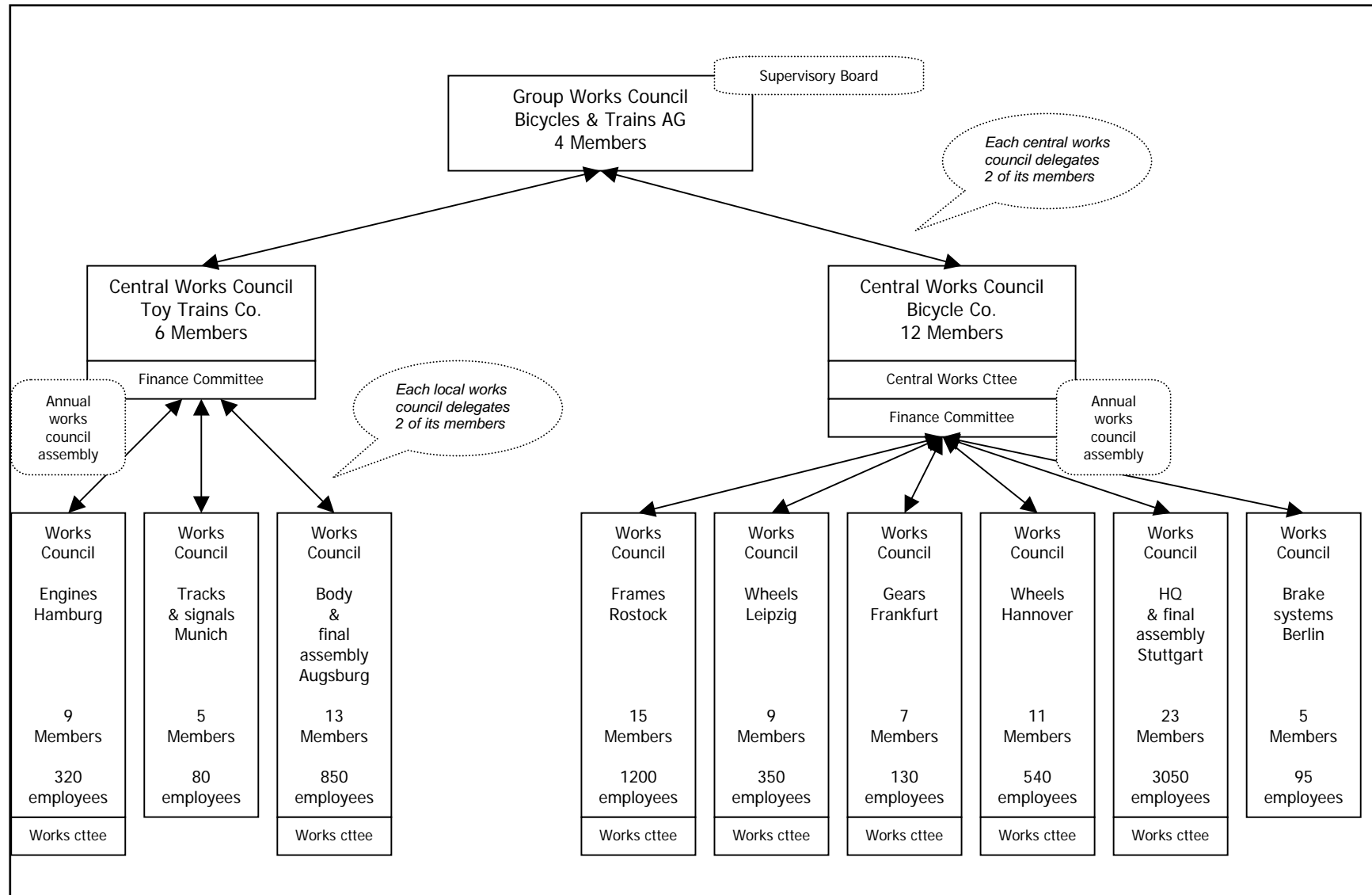
For an illustration of these different levels of works councils, see Figure 1: *A multi-level system of works councils according to the BetrVG.*

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<sup>7</sup> All citations of the Works Constitution Act (2001) are taken from the official English-language translation published online by the German Federal Ministry of Economics and Labour BMWA. <http://www.bmwa.bund.de/Navigation/Service/Englisch/labour,did=7514.html>



**Figure 1: A multi-level system of works councils according to the Betriebsverfassungsgesetz (BetrVG)**



### 3.5. The CWC as a federal political order

Watts (1991) identifies the characteristic features of federations which are consistent with the above restricted definition of federalism. I will demonstrate how, in line with these characteristic features, the relationships between local, central, and group works councils can be considered federal systems.

#### Orders of government under the *BetrVG*: the election and delegation of works council members

According to Watts, a federation consists of at least “**two orders of government**” (Watts 1991:229). In federalist terms, these two orders of government are a general or central government and regional government. As outlined above, if we replace “government” by works council, then this description clearly applies to the multi-tiered system of works councils under study here.

The members of **local works councils** under the *BetrVG* are elected by and from the workforce for a four-year term. Works council members can be re-elected to serve further terms. Candidates must have worked for the company for at least six months. Members of the executive staff<sup>8</sup> are not entitled to vote or stand as candidates. If a works council has three or more members, then whichever gender is in the minority in the establishment must make up at least the same percentage of the works council as it does in the establishment as a whole<sup>9</sup>. By default, the election is conducted according to the principle of proportional representation; i.e., the elector casts a single vote for one of several lists of candidates put forward by employees or trade unions<sup>10</sup>. The seats on the works councils are then distributed among the lists according to the proportion of votes cast for each list. In practice, however, works council elections are normally carried out by majority vote; i.e., a single list of candidates is put forward, and each elector can choose as many candidates as there are seats to be filled on the works councils. Those candidates who receive the highest number of votes will have been elected.

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<sup>8</sup> Executive staff (*leitende Angestellte*) are defined in Section 5 (3) *BetrVG* as employees who under their contract of employment or status in the establishment are for example “entitled on their own responsibility to engage and dismiss employees”, “are endowed with general authority (power of procurement) or full power of representation or power to sign”, or “regularly carry out other duties which are important for the existence and development of the company”, etc. (BMW 2001).

<sup>9</sup> This gender quota was introduced in the *BetrVG* reform in 2001. It did not apply at the time that the works councils at DaimlerChrysler were surveyed as part of this research.

<sup>10</sup> A list which is put forward for election must have the documented support of at least 1/20<sup>th</sup> of the total workforce or at least three electors (two electors in workplaces with less than 20 employees).

If a company has several establishments with works councils in place, then each local works council has the right to delegate members to the **Central Works Council (CWC)**. Within groups of companies, each local Works Council or Central Works Council has the right to delegate members to a **Group Works Council (GWC)**. (See Figure 1: *A multi-level system of works councils according to the BetrVG*.) Depending on the legal structure of ownership and control within the group of companies, there can be several Group or Central Works Councils in place; each of these can then delegate members directly to an overarching Group Works Council. The delegates are elected from among the delegating works council's members by majority vote; as will be outlined in more detail below, in CWCs and GWCs, this majority is qualified by votes weighted according to the relative strength of each local workforce represented in the delegating works council.

The *BetrVG* also allows for alternate arrangements for cross-site employee representation structures under certain conditions. Such alternative arrangements must as a rule be the subject of a collective agreement with the trade union represented in the company. It is only if there is currently no collective agreement with a trade union in force that alternative arrangements can be formalised in a works agreement signed by the works councils themselves.

Under the provisions of the 1972 *BetrVG*, the local works council of any establishment employing both blue collar and white collar employees had the right to send one representative of each group to the CWC. Similar requirements ensured the representation of both blue- and white-collar representatives on the GWC. One of the key amendments to the *BetrVG* in 2001 was to repeal this distinction between white and blue-collar workers. Instead, any local works council with three members or fewer elects one member to the CWC, and local works councils with more than three members have the right to delegate two members to the CWC. Furthermore, where for reasons of internal company ownership and control structure a local works council is not covered by an overarching central works council, it may delegate representatives directly to the GWC.

### **Each level exists in its own right**

Watts goes on to specify that these different orders of government within a federation exist “in their own right under the constitution, each directly elected and acting directly upon citizens by legislation, administration and taxation” (Watts 1991:229). The local works councils, the central works council, and the group works council each exist in their own right, as provided for by the *BetrVG*.

It must be said, though, that while the local works council is directly elected from among the workforce, the members of the CWC and the GWC are elected by the local works council or the CWC from among its members, rather than directly by the workforce; in this sense they are only indirectly elected to the CWC/GWC by the workforce. Nonetheless, the CWC and the GWC act “directly upon citizens by legislation and administration”; in CWC and GWC terms, this “legislation and administration” comprise CWC and GWC agreements and policies which, for a strictly defined set of issues at least, are directly binding upon the local establishments. Furthermore, as a result of the reform of the *BetrVG* in 2001, the CWC is also responsible for sites at which there is no local works council in place, either because they do not meet the threshold requirements or because the workforce has failed to elect a local works council. It is clear, then, that for a limited range of issues at least, the local works councils cannot ‘secede’ from the authority of the CWC.

### **Formal distribution of power and authority: the competence of the works councils at different levels**

According to Watts, a federation is marked by a **formal distribution of legislative and executive authority between the two orders of government**. This distribution of authority is laid down in a **written constitution** which is furthermore “not unilaterally amendable in its fundamental provisions by one order of government alone” (Watts 1991: 229).

#### *The competence of local works councils*

One of the main duties of the works council is to ensure that effect is given to Acts, ordinances, safety regulations, collective agreements and works agreements.

The range of rights granted to works councils represents an extremely complicated attempt to strike a balance between employee interests and managerial prerogative. Put simply, the rights of the works council can be distinguished according to their effect. On some issues, the works council has only participative rights (i.e., rights to information, to make suggestions, to be heard, to be consulted). On other issues, works councils enjoy the right to codetermination (i.e., the right to take initiative and to refuse approval). In general, works council rights are strongest with regard to overall social policy, somewhat weaker regarding to personnel issues, and still weaker with respect to financial and strategic matters (Jacobi et al. 1998; Knudsen 1995).

The *right to information*, although it is the weakest form of participation rights, ensures that the works council is informed in good time and comprehensively about the company's financial, operative and strategic plans; this information serves as useful background and leverage in exercising its other, stronger rights.

The *right to make recommendations, to be heard and to be consulted* are more far-reaching; however, they are graduated. The works council's *right to make suggestions*, for example, is limited to certain situations, such as staff planning, or the promotion of participation in vocational training, but the employer is obliged to take note of the works council's suggestions. The *right to be heard*, however, requires the employer to have obtained the works council's opinion before taking action; if the employer fails to do so, then the measure may be blocked. Measures about which the works council has the right to be heard include dismissals and new hires. The works council has the *right to be consulted* concerning issues such as workplace design, job content, staff planning, vocational training, and the introduction of new technologies, for example.

The works council has the *right to codetermination or co-decision* on a wide range of social matters, but even these provisional veto-rights are graduated according to the issue at hand. The intricacy of the limits to codetermination is far too complex to sketch here; a rough overview of the general issue areas subject to codetermination rights must suffice. Co-determination rights apply to such matters as order in the establishment, the distribution of working hours across the day and week (including overtime), holidays, the introduction and use of technical control equipment (insofar as they also monitor performance), and principles and methods of remuneration (including bonus schemes and performance-related pay). Specific aspects of staff issues, such as standard employment contracts, design of staff questionnaires, staff guidelines, or assessment principles are also subject to co-determination. Some core aspects of recruitment, grading and dismissals are also covered by codetermination. Finally, should restructuring in the establishment result in collective redundancies, for example, then the employer must secure the works council's approval of a social compensation plan. To the extent that specific aspects of any issues are subject to full codetermination, the employer must secure the approval of the works council.

While the various rights are specifically granted for closely-defined aspects of overarching social, personnel and financial issues, it is essential to note that in practice, these works council rights to information, consultation and codetermination are exercised tactically in conjunction with one another. To name a classic example, works councils regularly use their right to refuse to approve overtime in order to exert pressure on the employer regarding other issues in which their codetermination rights are less strong.

### *The competence of CWCs and GWCs*

It is important to bear in mind that the CWC is not hierarchically superior to the local works councils. It exists alongside them in order to exercise the same rights to participation and codetermination sketched above, but only with respect to those issues which have cross-site implications *and* which cannot be dealt with at the local level. Similarly, the GWC is not hierarchically superior to the CWC or the local works councils; it too exists alongside the other works councils in order to address issues which have implications for more than one company within a group of companies.

This principle of subsidiarity is paramount in the overall logic of the *BetrVG*. The local works council is closest to the workforce, and is thus best placed to deal with the range of issues on which works councils have the right to information, participation and codetermination. It is only in exceptional cases that the CWC or GWC is competent; as a rule, the local works council is competent rather than the CWC or GWC.

The formal allocation of authority between the local works councils and the central works council is laid out in the *BetrVG*:

#### Works Constitution Act, Section 50: Competency

(1) The central works council shall be competent to deal with matters affecting the company as a whole or two or more of its establishments, which the individual works councils are unable to settle within their establishments; therefore its competency also covers establishments that have no works council. It shall not be deemed to be a higher organ than the individual works councils.

(2) A works council may refer a matter to the central works council by a majority vote of its members. In doing so, the works council may reserve the right of decision.

A nearly identical wording in Section 58 of the *BetrVG* describes the competency of the Group Works Council with respect to Central Works Councils or local works councils.

In other words, the competence of the CWC and the GWC is strictly limited to those issues which cannot be settled at the level of the local works council. At the same time, the law allows for a delegation of competence to the CWC and/or the GWC, leaving it up to the local works councils to decide whether or not they are willing to be bound by its decisions.

Whether a matter affects more than one establishment is usually easy to determine, but whether it cannot be dealt with at the local level is often more difficult to determine.

Two examples should suffice to illustrate how the allocation of competence in each case must be assessed individually. The installation of a new telephone system, for example, is subject to codetermination since it can be used to monitor behaviour or performance of employees. If the same system is to be installed across the company, the CWC might be considered competent to exercise the rights to codetermination. However, the actual use of the telephone system will most likely vary across sites: in a site in which there are many desk-jobs, the use of the telephone can be linked to specific employees, while on the shop floor, there may be telephones that are for 'public' use. Since these different and possibly site-specific uses have implications for the employer's ability to monitor employees' performance and behaviour, the actual use of the telephone system must be regulated individually and specifically by each works council for each site, even if for technical or economic reasons the same system is to be installed across the company's different sites. The local works council would therefore have the last word regarding the implementation and use of the new technology.

To name another example, if the employer wants to introduce a company-wide bonus payment on top of existing collective agreements, then the question of whether or not such a payment is made and how high it is would not be subject to codetermination, but the works councils would have the right to codetermination about the *principles* according to which it is distributed across the workforce. If the employer makes the bonus scheme conditional upon the existence of a uniform agreement about the principles of distribution of the payment which are valid for all sites, then it is only the CWC or the GWC which is competent to conclude such an agreement (Kunz 1998).

Because of the strength of this subsidiarity principle, negotiations towards Central Works Agreements are quite rare in practice, and Group Works Agreements are even more rare. Indeed, it is only agreements which lie in the original competence of the CWC or GWC which take the legal form of Group or Central Works Agreements. In cases in which according to Paragraphs 50(2) and 58(2) the local works councils have referred a matter to the CWC or GWC, by contrast, the final agreement still takes the legal form of a set of local works agreements with identical wording. It is the local works councils who are officially the signatories of the agreement(s), and they reserve the right to terminate them.

Most commonly, then, as a means to accommodate this principle of subsidiarity, Works Agreements at the centralised level take the form of framework agreements, in

which certain minimum standards or outcomes are defined, but the actual specification of the measures and their implementation are subject to codetermination or participation at the local level. For example, some aspects of the introduction of company-wide systems of identification cards, such as the information it contains, might be regulated in a framework agreement at Group level, while other aspects such as the ways in which access to sites is regulated via company identity cards would be dealt with by local works council (Däubler et al. 2002: 867-888).

As a result of this strictly protected autonomy of the local level, the role of Central and Group works councils is far more to coordinate than to negotiate (Behne 1990; Däubler et al. 2002). And the need for coordination is rising. Even if as a rule final authority rests securely in the hands of the local works councils, the growing concentration of economic and strategic decision-making at the central level means that increasingly, holistic company-wide strategies such as lean production, restructuring of production chains and outsourcing are no longer decided at the local level, but at a more centralised level instead. The local managerial level is merely responsible for implementing these policies; this imbalance leads to an erosion of the local works councils' regulatory influence, since their access is limited to the implementing level, not the decision-making level. In response, the central and group works councils must increasingly step into this breach, not by regulating in the place of local works councils, but in securing information for all and in endeavouring to closely coordinate their day-to-day activities in order to foster a uniform approach to common problems (Kunz 1998).

In summary, then, since the *BetrVG* clearly defines the competence of works councils at each level, as well as defining the rules whereby the local works councils and central works councils can mandate the CWC and/or the GWC to act on their behalf, this federalist prerequisite of a formal distribution of authority which is laid out in a written constitution clearly applies to the multi-tiered works council system operating in accordance with the Works Constitution Act.

### **Specific processes and institutions: The comitology of the *BetrVG***

Watts points out that federations as a rule have defined “**specific processes and institutions** to facilitate intergovernmental administrative and political interaction” (Watts 1991:229). According to Watts, chief among such institutions are **central institutions**, “designed to ensure that the interests of regional minorities and groups are accommodated in the process of central policy-making”.



Under the *BetrVG*, local works councils which have nine or more members elect a *works committee*, consisting of the chairperson, deputy chairperson, and further members up to a maximum of nine, allocated according to the size of the works council. Where there are fewer than nine works council members, the works council may delegate the day-to-day running of the works council's business to its chair and deputy chair. Similar rules apply to central and group works councils. In addition to dealing with the day-to-day business of the works councils, these committees may be given responsibility for independent action by majority vote of the local works council, CWC, or GWC, respectively. (See Figure 1 : *A multi-level system of works councils according to the BetrVG.*)

At the cross-site level, the *BetrVG* requires the establishment of an executive committee in those CWCs or GWCs which have more than nine members. This executive committee, called the *Central Works Committee* or the *Group Works Committee*<sup>11</sup>, consists of the chair and deputy chair of the CWC or GWC, with the number of additional members to be elected varying according to the size of the CWC or GWC.

The works councils in companies with at least 100 employees can set up *additional committees, task forces, or project groups* and assign them specific tasks. Central works councils and group works councils can also set up further subcommittees to deal with specific issues and tasks. At all levels, joint committees can be set up with the participation of the employer or his representatives. At no level is a committee entitled to sign works agreements, however. Final policy decisions are the prerogative of the full works council only; in the comitology of the *BetrVG*, this substructure is designed to facilitate the administrative and political interaction which provide the basis for final policy decisions.

According to Section 106 of the *BetrVG*, works councils in companies normally employing more than 100 employees must appoint a *finance committee* consisting of between three and seven members. At least one member of the works council must be a member of this finance committee; further members can be drawn from the workforce at large. By majority vote, the local works council can assign the duties of the finance committee to one of its own subcommittees. The finance committee is always installed at the level of the whole company, not its individual establishments; where there is a central works council, it appoints a finance committee to cover the whole company. While there is no requirement for a finance committee at the Group

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<sup>11</sup> *Gesamtbetriebsausschuss* and *Konzernbetriebsausschuss* respectively

level, however, group-level finance committees have been set up by collective agreement in many companies.

The finance committee has the duty to consult with the employer on financial matters and to report back to the works council. The employer must inform the finance committee in good time and with the relevant documentation about issues ranging from the economic and financial situation of the company, the production and marketing situation, investment programmes, production techniques and work methods, to the reduction, closure or transfer of establishments or parts of establishments.

In summary, the *BetrVG* thus provides for specific processes and institutions across all levels, from the executive committee charged with running the day-to-day work of the CWC and the GWC, and other issue-specific committees as necessary, to the annual works council assembly as a means of ensuring both the democratic accountability of the work of the CWC and local works council's access to top-level management.

As will be seen, the CWC at DaimlerChrysler has devised an elaborate substructure designed to not only facilitate the process of joint policy development by local works council representatives under the aegis of the CWC, but also to ensure that the views of minorities, whether they be individual plants or groups of employees, are taken into account in the policy-making processes of the CWC.

### **An umpire: constitutional powers**

Watts points out that there is generally “**an umpire**, usually a supreme court, to rule upon disputes over the respective constitutional powers of the two orders of government” (Watts 1991:229). The labour court system in Germany plays this umpire role with respect to the *BetrVG*, and indeed the vast majority of cases involving CWCs and GWCs revolve around disputes about the distribution of competence between local and central works councils (Kunz 2003). Chiefly, such judgements involve cases in which a local works council disputes whether an issue can only be dealt with uniformly across all sites, and thus whether the CWC or GWC, rather than each local works councils individually, is competent to treat it.

### **3.6. The CWC as an interlocking form of federalism**

Føllesdal (2003) distinguishes between different forms of interaction between what he calls the sub-units and the central unit. The involvement of sub-units in central

decision making is institutionalised in one of two basic forms. In the first of these forms, which Føllesdal calls “**separate (split or compact) federalism**”, decisions made centrally do not involve the sub-units directly at all.

By contrast, in the second basic federalist model which Føllesdal calls “**interlocking or cooperative federalism**”, a variety of sub-forms have emerged in which the sub-units are directly integrated into the structures of the central level. He distinguishes between at least two forms of such interlocking federalism, while pointing out that the two often co-exist. Through forms of “**collective agency**”, compositional arrangements are struck whereby the subunits participate directly in central bodies, such as cabinets or legislatures. As Føllesdal points out, subunits often furthermore form a central body which interacts with other bodies. As an example of such “**divided agency**” which is characterised by its relationship with other bodies rather than its composition, Føllesdal cites an Upper House which has the power to veto or postpone decisions taken by another body or bodies by majority or qualified majority vote.

### **Decision-making within the works councils**

As stipulated by the *BetrVG*, decision-making within works councils functions by a majority vote among the members present; in some cases, a quota of a majority of all works council members (whether present or absent) is specified.

In the CWC and GWC, however, a system of weighted majority voting is introduced in order to take into account that sites of different sizes are represented by the same number of representatives from each site: each member of the CWC and GWC casts as many votes as he or she represents at his or her local site. Until the reform of the *BetrVG* in 2001, these proxy votes were allocated according to white- and blue-collar groups of employees: the blue-collar representative cast as many votes as there were blue-collar workers in the local site, and the white-collar representative cast as many votes as there were white-collar employees at the local site. At the time that this research was conducted, this system of vote allocation according to groups of employees was in force. Since 2001, however, when the distinction according to groups of employees was revoked, each CWC member is allocated half the votes of his or her site.

The decision-making processes and allocation of authority within a CWC and a GWC thus exhibit both variants of interlocking or cooperative federalism. On the one hand, the CWC is clearly a form of collective agency, since it is entirely made up of members of the sub-units, i.e., the local works councils. The wide-scale involvement of local

works council members in the work of some CWCs via committees and project groups can be understood to be a further form of such collective agency. At the same time, since the local works councils in many cases must formally mandate the CWC and the GWC to take decisions on their behalf, this also results in a form of divided rather than collective agency.

In summary, the *BetrVG*'s system of multi-level and above all cross-site interest representation at company level amounts to a federal political order in line with both inclusive and restrictive definitions of the term. The composition and decision-making procedures of each level are clearly defined, and power and authority are formally distributed among the levels. Specific processes and institutions exist to facilitate but not oblige background administrative and policy-oriented cooperation between levels. In case of dispute, the labour courts are mandated rule upon the constitutional division of authority between levels.

One final question which arises is whether the CWC might not better be termed a confederation. Hughes (1991:128), points out that "States sometimes share certain institutions of government [...] But when a point of no return is passed, when unanimity is no longer required for vital ultimate decisions, the related concept of federalism is appropriate." Assuming a case in which the CWC is indisputably competent according to Section 50 of the *BetrVG*, the law provides for majority decision-making according to votes weighed by the number of employees represented by each member. Since in such cases minority opinions can be easily overruled, this suggests that the CWC system as laid out in the *BetrVG* cannot be considered a confederation.

### **3.7. Democratic theory**

The following section explores the democratic underpinnings of federalist political orders. The discussion from this point onwards will refer only to central works councils. There are two reasons for this: the first is for clarity; as demonstrated above, the organisational features of central works councils and the group works councils are so similar to one another that they are virtually interchangeable in this discussion of central compared with local levels. Second, the case study below isolates the central works council at DaimlerChrysler; this discussion therefore provides a direct introduction to the case study which follows.

Føllesdal points out that "Federalism raises several challenges to democratic theory, especially as developed for unitary states. Federal arrangements are often more

complex, thereby challenging standards of transparency and accountability” (Føllesdal 2003).

Insofar as it was developed for unitary states of the Westphalian model, key tenets of democratic theory are challenged by federalism.

The power that sub-units wield in federations often restricts or violates majority rule in ways that merit careful scrutiny. Federal political orders typically influence individuals’ political influence by skewing their voting weight in favour of citizens of small sub-units, or by granting sub-unit representatives veto rights on central decisions. Minorities thus exercise control in apparent violation of principles of political equality and one-person-one-vote – more so when sub-units are of different sizes. These features raise fundamental normative questions concerning why sub-units should matter for the allocation of political power among individuals who live in different sub-units (Føllesdal 2003).

This criticism may ring true if one only thinks of majoritarian systems of the Westminster model. There is, however, no one unambiguous and uncontested ‘democratic theory’.

The model of **consociational democracy**, which can be considered the principal alternative to majoritarian systems (Lijphart 1991), provides the means to better grasp the role of minorities as they are captured within an essentially federalist and pluralist structure such as the central works council. Indeed, as Lijphart (1991) points out, federalism provides an especially suitable means of securing the segmental autonomy which is a key principle underlying consociational democracy. By applying the concept of consociational democracy, we may thus better understand the theoretical underpinnings of the exercise of democracy within the federal political model of a central works council.

Arguably, the system of weighted majority voting in force at the CWC does not contradict democratic theory, as suggested by Føllesdal (2001); indeed, because CWC members cast as many votes as individuals working within the plant which they represent, the system in place at the CWC is conceivably more in line with the principle of one-person-one-vote than are ostensibly similar systems of weighted majority voting. One of the most prominently discussed models of weighted majority voting is, of course, the qualified majority voting (QMV) system which is the decision-making modus applied for certain issues within the European Council. This QMV system in place at the EU only roughly approximates the size of the countries represented; most famously with respect to Luxembourg, it clearly skews voting weights in favour of

smaller countries, and irons out quite significant differences in population size among the four largest Member States.

### **The four basic principles of consociational democracy: executive power sharing, autonomy, proportionality and the minority veto**

Arend Lijphart (1991) provides a useful explication of consociational democracy: “consociational democracy is particularly suited for the governance of plural societies, that is, societies which are deeply divided by religious, ideological, linguistic, regional, cultural, racial or ethnic differences, which form clearly separate and easily identifiable segments.”

The individual works councils within the multi-tiered system of works councils can be considered regional segments in Lijphart’s terms.<sup>12</sup>

Lijphart (1991) defines consociational democracy in terms of four basic principles. The two most important principles are **executive power sharing** and a high degree of **autonomy** for the segments, or sub-units, of the plural society. The two secondary principles in Lijphart’s conception are **proportionality** and the **minority veto**.

Lijphart’s principles of consociational democracy can be applied to the federalist system of cross-site interest representation via the CWC.

Lijphart defines the first principle, **executive power sharing**, as government by a coalition of representatives of all significant segments (Lijphart 1991:137). In the sphere of public government, which is the basis for his explication, this may take a variety of forms, such as coalition government, presidential power-sharing and the distribution of high offices among the different segments. As Lijphart points out, this principle stands in stark contrast to the concentration of power in one-party, non-coalition governments which are typical of the Westminster model of majoritarian democracy. Applied to the CWC, this principle of executive power sharing is embodied in both the comitology of the CWC as well as in reservation of final decisions to the collective. It will be seen that in practice, the principle of executive power sharing is an ever-present concern within the CWC at DaimlerChrysler.

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<sup>12</sup> These “segments” are what Føllesdal (2003) calls “sub-units”.

The second principle of **autonomy** “prescribes the delegation of as much decision-making as possible to the separate segments”. Lijphart points out that this principle complements the first principle of executive power sharing: all issues of common concern should be taken jointly by the representatives of the segments.

The distribution of decision-making authority between the local and central levels is clearly prescribed by the Works Constitution Act which governs practice within the CWC: the primacy of the local works council is protected, yet mechanisms are in place to enable collective decision-making on issues of common concern and – with very few exceptions – by joint agreement only. This principle of segmental autonomy stands in clear contrast to centralised, unitary systems of majoritarian democracy systems.

The principle of **proportionality** is a further tenet of consociational democracy as defined by Lijphart. He refers to it as the basic consociational standard governing political representation; indeed “as a principle of representation it is particularly important as a guarantee for the fair representation of minority segments” (Lijphart 1991:138). Lijphart highlights two extensions of the effects of proportionality rule as a protection for minority rights: **overrepresentation of smaller segments**, and **parity**.

Both of these phenomena can be seen in the CWC. Despite widely varying site sizes, each establishment has the right to delegate two members to the CWC. In effect then, there is parity representation within the CWC, in which, furthermore, smaller segments (sites) can be considered to be over-represented. In terms of participation, then, the CWC grants parity representation, in which all segments are represented equally regardless of their size, and in which smaller segments are effectively over-represented. At the same time, while policy-making processes are open to equal participation, actual decision-making has been seen to be proportional, in that larger sites wield more votes than do smaller sites.

Lijphart’s final principle is that of the **minority veto** as “the ultimate weapon that minority segments need to protect their vital interest.” As laid out above, the local works councils enjoy a right of veto regarding all but very few issues. It is only for the relatively few issues for which the central works council is indisputably competent that they can be outvoted.

Lijphart specifies that this minority veto applies to “vital interests”; the question may arise, what is a local works council’s vital interest? In their rulings applying the admittedly rather fuzzy principle of subsidiarity, the German labour courts have consistently protected the autonomy of the local works council in regulating or at least having the last word regarding actual working conditions at the local site.

This principle of autonomy is thus also clearly linked to the principle of subsidiarity, which provides a plausible and compelling basis for the allocation of authority within federal political orders. Put very simply, autonomy is an absolute concept, while subsidiarity is about the relationship between the autonomy of different levels within a federalist system. Bermann defines the “elusive and sometimes deeply confusing “ (1994: 5) concept of subsidiarity thus:

Subsidiarity expresses a preference for governance at the most local level consistent with achieving government’s stated purpose. Although the virtues of local governance are sometimes treated as self-evident, they actually depend on our willingness to draw connections between local governance and certain more fundamental values (Bermann 1994: 8).

To take up the fundamental values underlying subsidiarity identified by Bermann (1994), the local works council has the right to self-determination, political liberty, and the protection of diversity; is accountable to the local workforce and must preserve their local identity; and, finally, is in a position to devise flexible, pragmatic, functionally equivalent responses at the local level, which can take internal and cross-site divisions into account without necessarily endangering the pursuit of collective objectives.

### **3.8. What is solidarity?**

As was seen above, the system of cross-site interest representation at Daimler Chrysler as laid out in the Works Constitution Act (*BetrVG*), can be understood to be a federalist political order. As prescribed by the *BetrVG*, the central works council (CWC) is responsible for dealing with those issues which affect more than one site, and which the local works councils cannot regulate at the local level. Besides these procedural provisions about the division of powers and tasks within a multi-level system of workplace interest representation, the *BetrVG* contains no content-based rules about which issues the CWC is meant to deal with. What the CWC is to deal with, and how, is left up to the discretion of the group itself.

In this respect, it is the expectations voiced by individual members of the CWC which prove the most revealing. Asked to identify the role of the CWC at Daimler Chrysler, one respondent put it as follows:

*“The main role of the CWC is for one, to agree regulations that are generally binding for the whole company, and then of course an important issue is to prevent being played out against each other, so to make sure that those rules which do apply [to all], apply in the*



*same way for everyone, otherwise it leads to a situation like we had with the breaks policy, that one site is played out against the others and that's a really great technique that management is working with there. They throw us a chunk so that we all jump all over each other, and attack it like dogs that bite each other and tear each other apart, just to get this chunk of meat" (11/3)<sup>13</sup>.*

This vivid statement makes clear the two main functions of the CWC in practice: first, the CWC serves an *external* function as 'mouthpiece', vehicle of interest representation, and negotiation partner vis-à-vis central management; and second, the CWC serves an *internal* function in coordinating joint employee positions and strategies in order to prevent sites being played off against one another.

In serving these two functions, an efficient and effective aggregation of the interests of the individual sites and the generation of social cohesion within the CWC are of central importance. Both are important prerequisites for the development of a basis of legitimacy and power which is not only sufficient to defend the interests of the workforce, but which also ensures that local works councils adhere to jointly developed policies and strategies.

The key to explaining the practical functioning and political capacity of the CWC within a federal system of interest representation lies in the answers to the following central questions:

1. How does cross-site interest aggregation take place? To what extent are local interests brought to bear on central strategy formulation? How is a common overarching interest identified or developed in the light of possibly diverging local interests?
2. Which political or organisational mechanisms and processes exist in order to generate social cohesion and solidarity within the CWC and in order to prevent a fragmentation of the group? Under which institutional and political conditions does the generation of social cohesion and solidarity take place? What are their opportunities and limits?

The challenge most commonly cited by the DaimlerChrysler CWC members lies in attempts by management to employ coercive cross-site comparisons in an attempt to extract concessions from individual sites.

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<sup>13</sup> Because most respondents preferred to remain anonymous, the figures in parenthesis following quoted statements indicate the interview and page number from which it is quoted.

According to CWC members, management “is always trying to play sites off against one another, and that’s why it’s so important that we compare notes, that we see what the others are doing, where it is all going, what’s happening over there” (8/3). “Individual sites’ vulnerability to blackmail has to be prevented” (4/3). “The CWC cannot in any way permit attempts to play sites off against one another” (34/2). “The blackmail policy goes across the whole company, across all the plants. It is sometimes so brutal that every plant gets blackmailed” (22/4).

In the light of these challenges, the members of the CWC at DaimlerChrysler see the need to close ranks, to support one another in the face of the threat of whipsawing. As will be seen in Chapter Five, there is a nearly universal consensus among CWC members that the company’s whipsawing strategies can only be withstood in the long run if the CWC develops and maintains a common line on how to deal with those issues which are most susceptible to coercive comparisons. But how can the CWC achieve this level of integration; how can such long-term strategic cooperation and a solidary balance of interests be established and maintained?

The discussion of the organisational character of a central works council at the beginning of this chapter made clear that negotiated consensus is the only path towards viable collective decision-making within the constraints of the federalist order established by the *BetrVG*. Despite the tightly constrained authority of the CWC, organisational mechanisms and processes exist to facilitate collective, pluralist decision-making.

The first of the two central questions identified above was *how and why is a common overarching interest identified in the light of possibly diverging interests?* As a first step towards answering this question, the following section will more generally explore the broad principles of solidarity. What is meant by solidarity, and how can it be achieved? The analysis of the case study of the CWC at DaimlerChrysler which follows will further investigate this question of *what is to be achieved* in conjunction with the second central question regarding *whether and under what circumstances it can be achieved*. What are the limits and opportunities provided by collectively shared visions of the role and purpose of the CWC at DaimlerChrysler and its various organisational mechanisms and processes? The transferability of these findings to the European level will be explored in Chapter Six. Finally, the implications of these findings for EWC practice, policy and research shall be discussed in the concluding Chapter Seven.

## Approaching the notion of solidarity – its use in everyday language

In terms of its meaning and usage, the concept of solidarity has a long and multi-faceted history. This stretches from the historic roots of the concept as a technical term in Roman law, in which the notion of '*obligatio in solidum*' refers to a specific form of mutual and unlimited liability (Zoll 2000: 17, Bayertz 1999: 3) to today's usage as a compelling moral underpinning for a wide range of highly diverse forms of support and cooperation.

Today, a vast variety of societal groups call for solidarity in a seemingly endless range of contexts. Solidarity *with* those in need is demanded as much in neighbourly and familial circles as it is demanded *with* the hungry in less developed countries, *with* the victims of political repression, or *with* workers threatened by lay-offs. At the same time, the peace movement appeals to solidarity *against* imperialistic and militaristic governments, the trade union movement calls for solidarity *against* companies who ignore fundamental workers' rights, and in the light of the upsurge in Neo-Nazi activities, the German government has for example called for the solidarity of democrats *against* right-wing extremists.

In the light of the evidently manifold usage of the term 'solidarity', Bayertz notes a tendency in current every-day language to denote any form of help or support as solidarity (Bayertz 1998: 49). Von Alemann even argues that the inflationary use of the term solidarity has "worn it down beyond recognition" (von Alemann 1996: 756).

In the search for conceptual clarity, however, and despite the wide variety of usages illustrated above, several basic characteristics of the notion of solidarity can be distilled. Common to all is both the idea of a mutual and inner connection between members of a group, as well as a normative component in that joint action aims to put a stop to perceived injustice or hardship. The fact that solidarity can be practised *with* the members of a group as well as *against* the perpetrators of perceived injustice or hardship indicates the simultaneously inclusive and exclusive character of solidarity. These characteristics are already found in Vierkandt's classic definition of the three constituent elements of solidarity: first, joint action in which "variety behaves as a unit"; second, defence against external "disturbances, interference and assaults"; and third, the existence of a "mentality of community", i.e., the individual's identification with the community which, in contrast to a simple interest group, is founded on a "state of inner attachment" (Vierkandt 1969: 944).

The basic characteristics of solidarity are described in day-to-day language by a member of the CWC at DaimlerChrysler: "*The workforce sticks together, and where it gets*

*problematic we help each other. Sometimes it's necessary to jump into the breach for someone else, but that also means that if I jump into the breach for someone, then I expect them to jump for me too, and if that doesn't happen, that's the end of solidarity*". This statement clearly identifies the mutual and reciprocal character of solidarity. Reciprocity as a characteristic and prerequisite of solidarity can be understood as a voluntary commitment to unilateral support, which is, however, linked to an expectation of support from others should the tables be turned (Hondrich and Koch-Arzberger 1992: 14). In practice, therefore, solidarity is as a rule expressed as a readiness to provide unilateral support, even if an expectation of reciprocity is an underlying motivating element. From this it follows, as Hondrich und Koch-Arzberger emphasise, that solidarity does not include every form of help and support, "but only those which are given out of a sense of aligned interests and goals, out of a *special* bondedness, in which at least the – even if fictitious – possibility of reciprocity is considered" (Hondrich and Koch-Arzberger 1992: 14, emphasis in the original).

### **Different types of solidarity**

Bayertz (1998: 49/50) provides a helpful distinction between community solidarity [*Gemeinschaftssolidarität*] and combative solidarity [*Kampfsolidarität*]; this distinction is relevant to this study's central question about the opportunities and limits of solidarity and its influence on the behaviour of the CWC and EWC as collective actors. Following Bayertz, community solidarity arises out of empathy and the perception of mutual linkages and responsibilities among groups of people based on shared living conditions, beliefs and values. This perceived sameness of living circumstances gives rise to a sense of belonging together and a feeling of collective loyalty and identity among members of a group; this in turn represents a important source of both individual identity and morals of group members.

In tracing the source of collective identity to a shared perception of common living conditions, Bayertz' notion of community solidarity thus corresponds in part with Durkheim's definition of mechanical solidarity in pre-industrial society. There is one key difference, however: as Coser (1984) points out, Durkheim's notion of mechanical solidarity relied almost exclusively on penal sanctions which punished behaviour which deviated from societal norms, values and beliefs. Bayertz' conception of community solidarity, by contrast, makes no reference to coercive imposition of solidarity.

It is not always possible to distinguish sharply between community solidarity and combative solidarity. The latter rests on the fact that individuals are prepared to band

together into a group in order to fight collectively for their shared interests. Following Bayertz, however, the key characteristic of combative solidarity is its dual polarity: i.e., combative solidarity has both a positive reference to specific goals and interests which are to be achieved by collective action by the group, as well as a negative reference to a common opponent who resists the realisation of the groups' shared goals and thus creates the need for joint action in the first place (Bayertz 1998: 41). Combative solidarity is thus by its very nature conflictual and morally compelling.

A distinction was drawn above between internal solidarity or *solidarity with* on the one hand, and between external solidarity or *solidarity against* on the other. For Bayertz, the dual polarity of combative solidarity integrates internal and external solidarity, or *solidarity with* and *solidarity against*, into the positive and negative components of combative solidarity.

### **Worker solidarity as a special form of solidarity**

Worker solidarity, which is often described as an ideal type of solidarity, can be understood to be a fusion of the two types of solidarity identified by Bayertz. Zoll considers worker solidarity to be a special form of Durkheim's mechanical solidarity (2000: 120), since the collectivism of the labour movement – at least in its early stages – arose out of the phenomenon that workers perceived their living and working conditions and their need to overcome exploitation and repression to be fundamentally identical. The essential emotional foundation for the emergence of traditional worker solidarity was grounded in a shared working-class milieu, which was marked by social and spatial nearness among those working in the same factory and living in the same neighbourhood, by mutual assistance in times of need, and (later) by membership in the same associations and societies (Hondrich and Koch-Arzberger 1992: 30).

Community solidarity as “organised risk compensation” [*organisierter Risikoausgleich*] (Zoll 2000: 121) took its first institutional form in the friendly societies which emerged in England in the second half of the 18<sup>th</sup> century as a means to ensure mutual support in cases of sickness, accident, old age or death. As Thompson (1980: 460-462) emphasises, the friendly societies were as much an expression of an “ethos of mutuality” as they represented a point of crystallisation in the emergence of an autonomous working class culture and collectivist values, which provided the foundation for the establishment of trade unions as a further institutional form of community solidarity. A key function of trade unions thus lay in the provision of mutual insurance, which the Webbs define as

the provision of a fund by common subscription to insure against casualties; to provide maintenance, that is to say, in cases in which a member is deprived of his livelihood by causes over which neither he nor the union has any control. This obviously covers the 'benevolent' or friendly society side of Trade Unionism, such as the provision of sick pay, accident benefit, and superannuation allowance, together with 'burial money', and such allowances as that made to the members of the Amalgamated Society of Tailors who are prevented from working by the sanitary authorities, owing to the presence of infectious disease in their homes (Webb and Webb 1920: 152).

Mutual insurance goes beyond mutual charity, however. It should be borne in mind that traditional worker solidarity has often included an element of discipline. As the Webbs write, "in a strong and well-organised union, the existence of important friendly benefits may become a powerful instrument for maintaining discipline among the members, and for enforcing upon all the decisions of the majority" (Webb and Webb 1920: 158). What emerges from the Webbs is that mutual insurance may look like charity, but it is implicitly based on the strategy that the support of the weak by the strong can prevent the former from undercutting the latter (Webb and Webb 1920: 158).

To put it bluntly, mutual insurance also meant insurance against defection. External solidarity or *solidarity against* usually implies an adversary who will otherwise divide and rule: in the absence of solidarity, there is competition and fragmentation of interests which may yield gain for the external adversary. In the short term, gains may also be won by some of the members of the group at the expense of the others, but in the long run, the workers divided will always be defeated. In an attempt to ensure the long-term maintenance of effective (external) worker solidarity, trade unions have traditionally seen hierarchical discipline as the only means of achieving solidarity in the face of powerful divisive internal and external pressures.

According to Bayertz, traditional worker solidarity went beyond the provision of mutual support on which community solidarity rests. It has always included an element of combative solidarity which is based on the perception of aligned interests and a realisation that these can only be defended in a collective struggle against opposing societal forces. In Bayertz' more general conception of solidarity, community solidarity is a resource, but not a necessary prerequisite for combative solidarity.

## **The importance and origins of shared values and norms**

The perception and pursuit of shared interests is a necessary, but not sufficient condition for combative solidarity. How collective interests are identified and shaped in the first place is the key to explaining the capacity for collective action.

Let us consider trade unions as the most prominent form and expression of combative solidarity. If indeed it were the case, as proponents of rational choice theory based on Mancur Olson's influential work *The Logic of Collective Action* assume, that the utility-maximising pursuit of individual interests is the only motivation behind the decision to form or join trade unions, then there would be no trade unions in the first place, as Kelly (1998: chapter 5) demonstrates in his scathing critique of Olson's work. Since a crucial outcome of trade union activity lies in the provision of collective goods, Olson's utility-maximising individual, who rationally weighs costs against benefits, would choose not to join a trade union at all if he or she could instead take a free ride by benefiting from the collective good in any case. However, as Kelly succinctly notes: "if everyone tries to free-ride there is no ride at all, so how does 'the ride' come into being?" (Kelly 1998: 78). Olson primarily explains the contradiction between his theory and the empirical phenomenon of trade union organisation by pointing to the provision of selective incentives and exercise of coercion. This explanation is, however, not very persuasive, since as Hyman emphasises, "neither [selective incentives nor coercion] could apply without pre-existing collective organization; hence, the problem of explaining collectivism is merely deferred" (Hyman 2004a: 275).

As Kelly convincingly lays out, the main problem in explaining collective action with the rational choice approach lies in its individualistic conception of the emergence of interests. Because of their individualist bias, rational choice approaches overlook the fact the interests and behaviour of individuals are also the result of social interaction processes. This means that an individual's behaviour is influenced both by his or her personal interests as well as by the values and norms of the social group with which the individual identifies (Kelly 1998: 72). Furthermore, an individualist conception of the formation of interests does not take into account that collective action can also arise out of the bonds of shared values and norms, which in turn result in a feeling of mutual responsibility and commitment within a group. How else can it be explained that individuals act 'irrationally' in Olson's sense by putting their own interests behind collective interests, and indeed willingly forego a free ride with explicit reference to notions of 'fairness'?

Against this background, I concur with Bayertz' assessment that worker solidarity goes beyond the bare fact of aligned interests by including an inalienable moral dimension. Indeed, worker solidarity is the opposite of free-riding (Bayertz 1998: 44).

From this it follows that worker solidarity is neither based on pure altruism (since an implicit expectation of reciprocity is inherent to solidarity) nor on pure utility maximisation, as posited by rational choice theorists. Worker solidarity thus rests on a fusion of combative and community solidarity, both of which influence one another. In other words, the collective pursuit of shared interests against an external opponent rests on the values and norms shared by the group. Community solidarity thus represents an important internal resource for the exercise of external combative solidarity. At the same time, the confrontation with an external opponent confirms and strengthens community solidarity. It is of central importance in this context that community and combative solidarity as constitutive elements of worker solidarity are not conceived as static; rather, they are in several respects shaped by dynamic social processes.

The importance of social interaction processes to the constitution of individual and collective worker interests and perceptions was demonstrated empirically in the numerous workplace studies conducted in Britain in the 1970s and 1980s (Lane and Roberts 1971, Beynon 1973, Nichols and Armstrong 1976, Batstone et al. 1977, 1978, Edwards and Scullion 1982), as well as in the works councils studies by Kotthoff (1981, 1994) in Germany. The key contribution of these studies to our understanding of collective action lies in their focus on the social generation of interests, i.e., in the mobilisation of bias. According to these analyses, individuals' collectively shared interests and perceptions do not arise more or less automatically out of the uniformity of living and working conditions; rather, they are always also socially constructed and situational. Thus, for example, Batstone et al.'s (1977, 1978) studies of shop steward organisation and activities demonstrate impressively how shop stewards influence and shape the attitudes and interests of individual members through social interactions in order to create and maintain a specific pattern of behaviour. As Kelly (1998) emphasises with respect to mobilisation theory, the collective interests, values, and norms of a group are the result of internal interaction processes and struggles between opposing individual or sectional interests: "In terms of mobilisation theory, many of these struggles involve debates over the most appropriate ways of 'framing' issues that face the union or the union movement" (Kelly 1998: 54).



## How solidarity is generated

Returning to the notion of solidarity as one of many possible collective interests, it becomes clear that it must come from somewhere. Building upon the legacy of earlier workplace studies, Fantasia's (1988) research on the emergence of different *Cultures of Solidarity* explores the process-based and socially constructed character of worker solidarity in particular. On the basis of three in-depth case studies, Fantasia describes solidarity as both expression and result of the struggle to defend workers' rights in the face of a common opponent:

"During the course of these struggles, 'cultures of solidarity' were constructed by workers. That is, tactical activities, organizational forms, and institutional arrangements were employed that represented the expression of solidarity and its creation simultaneously in the process of their development. These cultures of solidarity took myriad of forms in response to the specific features and demands of particular struggles" (Fantasia 1988: 20).

What is distinctive about Fantasia's conception of solidarity is that he grasps the emergence of solidarity as situational and as the outcome of an open-ended process of social interaction. According to Fantasia, the emergence of solidarity is situational in that it is necessarily shaped by the institutions and practices of a given system of industrial relations; at the same time, it is an open-ended process because new social dynamics emerge when workers band together in order to pursue their common interests; it is these social dynamics which enable solidarity, and furthermore, they express themselves in those forms which are appropriate to the situation or circumstances at hand.

Such a dynamic, process-based conception of solidarity enables us to explain the emergence of worker solidarity even within highly differentiated modern societies, since it no longer assumes the existence of a homogenous living and working world, but instead sees the emergence of shared interests and values as the result of social interaction processes. Durkheim's notion of organic solidarity, which is based on a fusion of difference and sameness (Zoll 2000: 32), takes into account this need for a more flexible conception which is capable of explaining emergence of solidarity in modern societies. The consistence of this idea has been developed further by Hondrich und Koch-Arzberger, who define solidarity thus:

Solidarity is cohesion [*Verbundenheit*] despite differences, despite inequality (and thus assumes social differentiation). At the same, it is also cohesion because of difference, namely because of unequal encroachment on interests which are

perceived to be equivalent. Solidarity is demanded of or explained by those who are, given otherwise identical interests, at that moment better off (1992: 13).

In the light of growing processes of social differentiation and the obvious problems confronting collective organisations such as trade unions as traditional champions of solidarity, one must ask: how much difference can solidarity endure?

### **Individualisation and pluralisation as challenges to worker solidarity**

There is a broad consensus in the academic observation of social change processes that today's modern societies are marked by an individualisation and pluralisation of individuals' station in life, their needs, and thus their values and norms; this poses new challenges, not only for traditional collective organisations such as trade unions, but also for works councils. Conclusions differ widely, however, when it comes to interpreting the implications of these processes on the generation and exercise of solidarity in general, and of worker solidarity in particular.

More pessimistic analyses emphasise a tendency towards de-solidarisation. In his influential work *Risikogesellschaft* (1986), Beck, for example, notes three parallel processes which tend towards the erosion of the very foundations of solidary behaviour. First, increasingly heterogeneous social circumstances resulting from the emergence of new inequalities according to gender, age and ethnicity; second, the fragmentation of traditional milieux and the resulting loosening of social ties; and third, the emergence of a new post-material political model which causes the decline of large, traditional social democratic and catholic-social groups.

In this context, Negt identifies a "cultural crisis of erosion", in which old norms are no longer implicitly valid, although new norms are not yet in place but are instead still being sought (Negt 2001, 2004). He thus sees the reduction of the individual fears and insecurities which are associated with this search as a crucial element of the capacity for solidarity: "The fear-ridden members of a competition society, who are fighting for survival, have as a rule few resources to devote to the development of solidaristic cooperation" (Negt 2001: 7).

Less pessimistic analyses emphasise that despite a tendency towards the disintegration of classical milieux, the class differences within modern societies have not disappeared; they are merely concealed behind group and individual interests. Thus, the conditions for traditional solidarity are still present, if latent (Grebing 1996: 765). One of the central findings of the empirical analysis of German social structures by Vester et al.

(2001) is that traditional social milieux have not so much disintegrated as undergone an internal process of modernisation and differentiation. The authors emphasise that it is precisely because of their capacity to adjust and differentiate that traditional “everyday class cultures” demonstrate an extraordinary stability and continue to influence individuals’ perceptions and actions by way of inherited lines of tradition and experience [*lebensweltliche Traditionslinien*] (Vester et al. 2001: 13). With respect to traditional worker milieux, Schumann’s (2003a, b) empirical analysis of worker consciousness confirms this finding of simultaneous continuity and internal differentiation. In the light of the transformation of the capitalist production regime, Schumann identifies the emergence of six ideal-types of social groups, which differ above all according to their current employment status and their socio-occupational background, and thus in their labour market power.<sup>14</sup>

The empirical findings of Schumann’s study demonstrate that those groups of workers whose perceptions are most relevant to collective interest representation (“shapers of modernisation”, “skipped over by modernisation” and “threatened by modernisation”) do not fundamentally question the necessity of trade unions and works councils as an opposing force to company management (Schumann 2003a: 120). Thus, despite the internal differentiation of the workforce as a whole, works councils and trade unions can still draw upon normative perceptions oriented towards the values of fairness and justice in their mobilisation of solidarity.

The study furthermore demonstrates, however, that the variations in labour market position and diverse socio-occupational backgrounds give rise to different expectations and prerequisites for solidary behaviour; solidarity is thus confronted by differentiated interests and highly specific perceptions of problems.

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<sup>14</sup> The first type is the “global class” and includes top-level actors in industry, politics, and culture, whose ample power resources enable the highly effective defence of their own interests. The second type, the “modernisation-makers” includes employees in the service and knowledge sectors as well as research and development experts who have benefited from exclusive professional training and skills and who have a great deal of confidence in their own ability to shape their destinies. The third type, the “modernisation losers”, is the polar opposite to the first two types; it includes those who have been excluded from gainful employment against their will, i.e., the (long-term) unemployed. The fourth type are those who are “threatened by modernisation”, and includes those employed in precarious or atypical employment, such as temporary workers and seconded employees who have little job security and scant “market power” in the labour market. The fifth type has been “skipped over by modernisation”, and is made up of those who are (still) in more or less secure employment in companies and industries which rely heavily on labour-intensive production; these workers, however, have little individual labour market power. The sixth type are the “shapers of modernisation”, comprising skilled blue-collar and white-collar workers, who have benefited from the introduction of innovative production processes and concepts and who enjoy a fairly secure position in the labour market. (Schumann 2003a: 111).

The differentiation of the workforce and the resulting pluralisation of living and working worlds has thus led to a pluralisation of the very understanding of solidarity. With respect to the group he calls “shapers of modernisation” in particular, Schumann concludes that “the heterogeneous points of contact with the modernisation-shapers in particular will be difficult to tie together without organisational efforts to mediate and aggregate [...] The modernisation-shapers’ approach towards solidarity can no longer be taken for granted; it can only be achieved by means of insight won through discourse” (Schumann 2003a: 119).

More problematically, the manufacturing sector is undergoing a profound transformation towards a global division of labour: large, internationally active companies have decreased their emphasis on manufacturing within heretofore highly industrialised countries in favour of a concentration of research and development and after-sales service, while shifting actual manufacturing activities elsewhere. This division of labour means that the group of workers which Schumann calls “modernisation-makers” (i.e., so-called knowledge workers, particularly research and development experts) are becoming the dominant group of employees in the industrial sector in what can be called post-industrial countries. As Schumann points out, these “modernisation-makers” have a pronounced confidence in their own ability to shape their destiny; since they prove largely impervious to the traditional appeal of trade unions, Schumann is pessimistic about the ability of trade unions to find effective and compelling ways to address and mobilise these workers in particular, even if trade unions successfully develop the means to recapture the appeal of traditional solidarity by actively mediating and aggregating diverse interests among other groups of workers.

Overall, however, Schumann’s analysis makes it clear that the aggregation of interests which is so crucial to the mobilisation of combative solidarity as a central element of worker solidarity does not arise ‘naturally’ out of a uniformity of living and working conditions, but instead must be deliberately induced and nurtured. This is particularly the case in modern society, since worker solidarity must compete with a range of other, more heterogeneous community relationships and commitments.

In view of the ongoing differentiation and pluralisation of conceptions of solidarity, modern and necessarily overarching forms of solidarity can only be the result of active negotiation and mediation, which are geared towards attaining a socially reasonable balance of interests on the basis of democratic-discursive problem-solving processes (Schumann 2003b: 95).

This presents new challenges to solidarity-creating institutions such as trade unions and works councils, since they must consider modern conceptions of solidarity in their interest representation strategies. It is thus necessary that they reconceptualise their notion of solidarity in a way which achieves the transformation from a monopolistic concept of solidarity to a pluralistic conception of solidarity while retaining the normative goal of overcoming injustice and adversity.

### **The necessity of an alternative conception of solidarity**

In the academic discussion about the fragmenting effects which observed processes of individualisation and pluralisation of interests have on the generation of solidarity, it is frequently pointed out that these pose significant organisational challenges for trade unions in particular.

These societal transformation processes also pose new challenges to central works councils as collective interest representation organs in their attempts to generate internal social cohesion and to retain their capacity to act externally towards employers. The challenge of organising solidarity within central works councils and EWCs is twofold: first, following Schumann, internal differentiation processes across the workforce mean that the individual members of the CWC and the EWC must take into account the differentiated interests and expectations of an increasingly heterogeneous workforce at the local level in exercising their representative role at the local, national, and European levels. Second, the problem of organising sustainable solidarity is further exacerbated by the increased pressure of cross-site competition within the company, which is caused by the increasingly integrated and transnationalised production and business strategies.

Against this backdrop, the central question of this study is as follows: Under which conditions can workers' solidarity in the CWC and EWC as collective organisations provide an organisational resource to secure integration inwards and a capacity to act in concert outwards?

Or, in other words: which policy-oriented and organisational measures are necessary to generate solidarity within a federal system of interest representation in the face of individualisation and pluralisation of interest conceptions?

In answer to these questions, the above discussion of workers' solidarity provides the basis for identifying the key conditions under which solidarity can provide the foundation for the CWC's and the EWC's capacity to act in the light of the societal and

economic transformation processes of our time: the promotion and maintenance of credible participative-discursive processes of exchange and decision-making which are underpinned by a credible appeal to the lasting values captured by traditional conceptions of solidarity.

The establishment of discursive and participative structures is perhaps the most frequent recommendation to be found in the relevant literature regarding how collective organisations (direct reference is often made here to trade unions) can organise solidarity even under changed societal and economic framework conditions.

Following Negt's call for "participative trade unions" [*Beteiligungsgewerkschaften*] (Negt 1996: 770), 'participative works councils' can be considered a crucial prerequisite for the generation of solidarity across sites and countries. The provision of more room for structures which enable discussion and participation would in particular take into account that the inner differentiation of the workforce as a whole and the resulting competing loyalties means that worker solidarity neither arises naturally nor can it be imposed from above.

In a discourse-oriented national or European 'participative works council', solidarity and any collective action resulting from it would rather be the result of internal discussions and debates marked by the active participation of the representatives of different sites and countries. Within such a framework, every member of the central or European Works Council has the possibility to bring specific local and/or national interests to bear on the process of decision-making and interest aggregation at the central level.

This conception of a 'participative works council' does not suppress existing conflicts of interest; on the contrary, it takes them into account and makes them the very basis of its decision-making. In this sense, a 'participative works council' comes close to the ideal formulated by Hyman with reference to Piore of collective employee interest representation structures as "'communities of action' (organisations that provide a context for individual self-realisation) and as 'borderland institutions' (which bridge the ideals and perspectives of distinct social or cultural groups)" (Hyman 2004b: 7). Such an organisational conception would also take into account the empirical findings of the so-called workplace studies, which found that the generation of collective and individual interests within communicative social interaction processes are dependent on one another.

Furthermore, situation-specific or issue-specific interest compromises which are developed out of discursive and participative processes can also be expected to be

more stable than those which are imposed hierarchically, since the inclusion of individual site representatives means that such compromises rest not on the exercise of power, but on advocacy and insight. This in turn increases the chances that each site representative takes ownership of whatever joint solution was found, thereby integrating collective perceptions and interests into his or her own individual and site-based perceptions and actions. The 'participative works council' thus takes up a pluralistic conception of solidarity and does not undermine the autonomy of local or national works councils or the subsidiarity inherent to federalist conceptions of cross-site and cross-country interest representation.

The emphasis has lain above on the creation of organisational conditions for the generation of solidarity. As empirical research by Vester et al. (2001) and Schumann (2003 a, b) has shown, however, the conditions giving rise to what Durkheim called mechanical solidarity have not disappeared completely. The relevance and appeal of a legacy of solidarity, i.e., the visions which are anchored in the collective memory and which are often invoked as the solidarity of the glory days and the historic successes which have been attributed to it (Hondrich and Koch-Arzberger 1992: 33) should not be underestimated as a condition for the generation of social cohesion.

Moreover, as Fantasia (1988) points out, social interaction processes which generate solidarity do not take place in a power vacuum. On the contrary, they are marked by significant power differences between sites; indeed, both employee representatives and management are well aware of these power (im)balances. In the generation and maintenance of social cohesion as a foundation for solidarity, it is all the more important that representatives of stronger and more influential sites openly signal that they are prepared to take a step back and allow themselves to be bound into more egalitarian, participative structures, or that they are also willing to use their power resources vis-à-vis the employer for the benefit of smaller and less assertive sites. Because the inherent reciprocity of solidarity initially — if implicitly — assumes the provision of unilateral support based on trust, such measures increase the confidence in and identification with the CWC or the EWC.

Furthermore, a participative/discursive works council presumes that each participant has the same possibilities to participate actively. While specific rules and procedures may at first glance ensure 'equal time' for all, this does not mean that the contributions of all participants are weighted equally, as will be seen in Chapter Five below. And with respect to EWCs, as Stirling and Tully (2004) point out, the fact that communication is inextricably linked to questions of power and control means that an inability to overcome the language and cultural barriers within EWCs may amount to an insurmountable barrier to the development of trust and solidarity. The need to

ensure equal participation despite linguistic and cultural differences within the EWC will be discussed further in Chapters Six and Seven.

Returning briefly to conceptions of worker solidarity, a distinction can be made between solidarity from above (hierarchical) or from below ('spontaneous'). An analogous distinction can be made between imposed/negotiated or disciplinary/discursive solidarity. This distinction is central to Durkheim's mechanical/organic distinction: in the former, rigid social norms are applied coercively; in the latter, interdependence creates a willingness to cooperate among autonomous moral agents.

If employee representatives face the risk of employer divide-and-rule, then internal solidarity has to be primarily a means to guarantee the maintenance of external solidarity. It was pointed out above that in order to ensure the maintenance of effective (external) worker solidarity, trade unions have traditionally seen hierarchical discipline as the necessary concomitant. However (and whether or not 'mechanical solidarity' was effective or desirable for traditional trade unionism) a CWC or EWC lacks the hierarchical legitimacy and sanctions to impose a 'common rule': its only means lies in the negotiated/discursive model.

### **The organisational prerequisites for solidarity: key points of analysis**

If we look more closely at what such a participative and discursive decision-making process must ideally deliver in practice, we can define a set of analytical points of orientation for the empirical investigation of the functioning and action of the CWC at DaimlerChrysler, and, building upon that, for the perspective of solidarity in European Works Councils.

If it is to generate and support solidarity, a discursive-participative structure must be able to ensure the following:

- First, it must provide **wide-ranging opportunities for participation**, since these increase the identification of individuals with the whole group by providing a basis for the **stabilisation or regeneration of a normative foundation for collective activities**. In this way, discursive and participative elements strengthen the internal social cohesion (i.e., community solidarity) as an essential condition for effective action outwards vis-à-vis the employer (i.e. combative solidarity).



- Second, participative elements must be able to **strengthen the capacity of a compromise, once reached, to command commitment**, thus increasing the probability that those who participated in the process will also adhere to commitments made as a result of a negotiated solution or compromise.
- Third, discursive processes must ensure both the **transparency of decision-making processes** and **sufficient density of interaction among group members**. Transparency and the opportunities for (independent) control provided by dense and interlocking communication enhances trust in the collective actor.
- Fourth, **power asymmetries must be dealt with responsibly**. Representatives of stronger and more influential sites must demonstrate a willingness to take a step back in the interests of the whole or to use their influence for the benefit of weaker sites; they must allow themselves to be bound into egalitarian structures if the inherent reciprocity of solidarity is to prove a solid foundation for collective identity and action.
- Fifth, a ‘participative works council’ must be able to **offer a preventive solution to the fundamental dilemma of solidarity** pointed out by Vobruba (1989: 66): the greater the divisive pressure from outside to increase competition among those who strive to generate solidarity with one another, the more difficult it is to achieve solidarity. In response to external pressure, such as situations in which an employer tries to play sites against one another, there is a marked danger that individual sites do not act in solidarity but instead break ranks in an effort to achieve what they can on the basis of their own strengths. In order to prevent such dilemmas, it is of great importance that opportunities which occur in times of low external pressure are used to reach agreement preventatively, so to speak, about how to deal with conflictual situations if and when they arise.
- Sixth and finally, such processes must **actively support the generation of shared values and morals**. The moral dimension of ‘traditional’ solidarity, the vision and idealism behind it, must be given room to unfold and be tested.

Processes which support such a modernised understanding of solidarity which links new conceptions with traditional potentials of solidarity, can contribute to a central works council’s or a European Works Council’s internal stability and external capacity to act vis-à-vis central management.

### **3.9. Tying it all together: federalism, democratic theory and solidarity**

This chapter set out to provide the foundation for the analysis of the practical functioning and political capacity of the CWC within a federal system of interest representation and for an exploration of the lessons learned from this analysis for the perspective of solidarity in European Works Councils. An analysis of these issues must address the following central questions posed at the beginning of this chapter:

1. How does cross-site interest aggregation take place? To what extent are local interests brought to bear on central strategy formulation? How is a common overarching interest identified or developed in the light of possibly diverging local interests?
2. Which political or organisational mechanisms and processes exist in order to generate social cohesion and solidarity within the CWC or EWC and in order to prevent a fragmentation of the group? Under which institutional and political conditions does the generation of social cohesion and solidarity take place? What are their opportunities and limits?

The constitutional language of federalism is well-suited to grasp the dynamics of multi-level processes of interest representation and interest identification. Federalism does not determine outcomes, but provides a favourable framework for flexible, pragmatic, politicised outcomes. Organisational structures merely provide a framework which is filled out by actors according to their own functions, perceptions, and interests, both collective and individual or site-based.

As Wheare (1946) points out, practice, not constitution is definitive. This chapter aimed to establish a foundation upon which to examine actual practice at one particular CWC: how does a federalist order enable pluralist governance? How is the balance struck between central and local decision-making? What implications does this balance have for the generation of solidarity?

The federalist structure laid out in the *BetrVG* leaves the actual subjects and degree of centralisation largely up to the actors themselves. What the federalist structure provides is the opportunity, not the obligation to coordinate and collaborate. Any perceived obligation must come from the members themselves.

The federalist system of cross-site interest representation clearly defines the composition by election or delegation of the various levels within a multi-level system

of company-based interest representation. Power and authority are formally distributed among the levels: while the local works council enjoys primacy in all but very few areas, the increasing centralisation of companies has prompted a search for pragmatic solutions to seemingly overlapping competences and areas of responsibility. Lacking an uncontested authority to negotiate on behalf of local works councils, the CWC must actively devise means to coordinate rather than command. Specific processes and institutions exist to facilitate the necessary background administrative and policy-oriented cooperation, and the labour courts are called upon to rule upon disputes regarding the constitutional division of authority.

In enabling and indeed requiring a pluralist, consensus-oriented approach, and in providing the means to accommodate both unity and diversity, the federalist representation and decision-making structure provided by the *BetrVG* rests upon the key principles of consociational democracy: executive power sharing, autonomy, proportionality and the minority veto. Executive power is shared: first, the CWC as a group exercises only very tightly circumscribed unilateral authority, and second, neither the chairperson nor the executive committee can take final decisions on behalf of the whole CWC. The autonomy of the local level in particular is protected by reserving all but a few issues to its sole prerogative, yet at the same time, centralised cross-site decision-making is enabled by giving local works councils the right to mandate the CWC on a case-by-case basis, while still reserving their right to make a final decision.

In those instances in which the CWC actually acts on behalf of the local works councils vis-à-vis central management, the result is almost always a complicated framework agreement fixing obligations by central management and containing carefully crafted clauses for local implementation. Most often however, the CWC must convince all its constituent members to follow a centrally agreed line in their autonomous local activities.

Thus, the power and influence of the CWC rests on its power to convince, not to command. This is the key to understanding the way in which the federalist structure provides the organisational means to generate solidarity: the primacy of the local level means that decisions reached in the CWC must be based on insight and advocacy; they cannot be imposed from above.

The final section of this chapter concluded that discursive-participative structures and credible appeals to traditional workers' solidarity are the key to generating solidarity. To recapitulate, the key features which mark such a discursive-participatory process are: the provision of wide-ranging opportunities for participation in order to provide a

basis for the generation, stabilisation, and regeneration of a normative and strategic foundation for collective activities; this normative foundation also calls upon inherited traditions and ideals of solidarity. Differences are not papered over; they are instead taken up as the very foundation for collective decision-making. Individuals must be able to identify with the whole group, in order to strengthen the degree of commitment which individuals feel towards decisions taken. Transparency of decision-making must be ensured, and dense rather than sparse interaction not only increases transparency, but also provides opportunity for (independent) control. Existing power asymmetries must be dealt with openly and responsibly, and stronger actors may be called upon to demonstrate their willingness to forego individual gain for the benefit of the whole. Opportunities to develop preventive solutions to potential conflicts of interest must be seized before such conflicts flare up.

It will be demonstrated in this study that the federalist order exemplified by the CWC is about more than the allocation of power and authority. It also serves to foster the shared values which underpin the system. Because federal political orders are designed to accommodate both unity and diversity within a single political system, they are appropriate to organic conceptions of a political or social order. As Durkheim famously argued, 'organic solidarity' grows out of interdependency caused by difference, rather than similarity. The argument draws on the analogy of a living animal, all of whose organs must function together in order for the animal to survive. This posits a fundamental understanding and appreciation of this interdependency: if people fail to comprehend the ties that bind them to others, then the system breaks down (*anomie*). As will be demonstrated, the CWC at DaimlerChrysler and its substructures serve to establish and continually reinforce this sense of mutual dependence as the underlying motivation for the actions and policies of the CWC. There is a nearly universal consensus among the CWC members, as well as among the local works councils members, that this is the primary rationale for the existence and work of the CWC at DaimlerChrysler. It is this widely shared insight into the need to cooperate despite at times diverging local interests which provides the basis for solidarity among the works councils at DaimlerChrysler.

In his analysis of the historic emergence of federalist systems, Stepan (1999) has identified two processes of federalism. He distinguishes between "holding together" federalism, which develops out of unitary states as central governments try to alleviate the centrifugal forces of minority's demands for autonomy, and "coming together" federalism, in which sovereign powers are ceded or pooled in certain areas in order to achieve goods otherwise unattainable, such as security or prosperity.

In the context of the present analysis, it is important to bear in mind that the process of federalism is not static; as Stepan (1999) points out, it is dynamic and indeed fluidly shaped by the circumstances and issues at hand. Multi-tiered systems of works councils can be understood to be ‘coming together’ federalism: access to management at more central levels, as well as the capacity to coordinate common goods, such as better working conditions or a level playing field, are attained by pooling sovereignty within CWCs, GWCs, and EWCs. And solidarity, which, as has been argued above, has far less to do with sovereignty than with loyalty, can also be the outcome of ‘coming-together’ federalism.

The following case study of the CWC at DaimlerChrysler will explore in detail the emergence of “coming-together federalism” : in response to a widely perceived need to contain the centrifugal effects of differentiation, the CWC at DaimlerChrysler has over time increased the degree of both formal and informal central coordination.

An analysis of the ways in which this process enhances the capacity for solidarity yields important insights into the perspective of cross-national solidarity within EWCs. It will be seen in Chapter Six that while EWCs can also be considered to be basically federalist, compared to CWCs there are important limitations to their ability to generate solidarity. Most obviously, differences in language and culture, but also fewer and/or less developed opportunities as well as patchy and unclear rules and procedures for exchange and participation impede the processes of participative and discursive collective decision-making which have been seen to be essential to the generation of solidarity. Unclear rules and procedures raise the necessity of developing legitimate yet flexible means to ensure a responsible approach to power asymmetries and to generate social cohesion in the face of divisive coercive comparisons.

## Chapter Four: Methodology and Method

### 4.1. Metatheoretical assumptions and research design

Within the social sciences, a distinction can be made between objectivist and subjectivist approaches, which, as Burrell and Morgan (1994) show, each rest on a specific set of epistemological and methodological assumptions. These specific metatheoretical assumptions in turn influence the choice of methods to be employed.

From an objectivist perspective, which rests on a positivist epistemology and a nomothetic methodology, the goal of social science is to “seek to explain and predict what happens in the social world by searching for regularities and causal relationships between its constituent elements” (Burrell and Morgan 1994: 5). As Blaikie (1993: 15) emphasises, the main objective of an objectivist research approach is to establish generalisations and law-like statements which apply across time and space.

In contrast, the subjectivist approach is anti-positivist, (or in Blaikie’s terms interpretivist) and idiographic in nature. This means that the main goal of subjectivist research approaches lies in understanding ‘from the inside’, or as Burrell and Morgan put it, “from the point of view of the individuals who are directly involved in the activities which are to be studied” (Burrell and Morgan 1994: 5). In short, in subjectivist research the goal is a holistic understanding of the phenomenon under investigation.

These different metatheoretical assumptions are also expressed in the different value assigned to structure and agency in explaining social phenomena, i.e., the analytical focus. Following Scott (1997), one can distinguish between objectivist and subjectivist approaches as follows: while the former concentrates primarily on the macro-level of the analysis of social systems and structures, which in this perspective exist independent of individual actors and furthermore influence or even determine their actions, the subjectivist approach puts the individual at the centre of the analysis. According to Scott (1997: 202), “the common thread in [...] subjectivist approaches is to see social organization — social institutions and ‘society’ itself — as the direct creations of individual acting subjects”. The focal point of subjectivist analyses are thus individual actions and the individual goals, motives, and perceptions which underlie them.

This research belongs to the second category. The central objective of this research is to explore the potential for solidarity in cross-site multi-level structures and processes of employee interest representation on the basis of an analysis of social processes within the CWC from the point of view of its members and constituents. This approach is

based on the assumption that the behaviour of the CWC as a collective actor is the result of social interaction processes shaped by individual interests and perceptions. These interaction processes do not take place in a vacuum, however. The interests and perceptions of the individual actors are themselves influenced by the social context in which they are embedded. Against this background, Hyman (1989) stresses the necessity of a dialectical approach: "There is [...] a complex two-way process in which our goals, ideas and beliefs influence and are influenced by social structure. To do justice to its complexity, industrial sociologists must be attuned to this dynamic interaction between structure and consciousness" (Hyman 1989: 76).

The pursuit of a dialectic and actor-centred approach requires the use of qualitative, explorative methods. This is particularly true for this research, since the actual operation of CWCs has hardly been investigated empirically. As Ragin (1987: 35) emphasises, qualitative methods are sensitive to complexity and thus enable a holistic understanding of the phenomenon under investigation. In order to be able to grasp the motivation of the CWC members and the meaning which they ascribe to the phenomenon under investigation, this research thus relies heavily on qualitative techniques such as participant observation, interviews, and the analysis of archival data (Bryman 1995).

A further consequence of the pursuit of a qualitative approach is the limited number of cases which can be analysed. In contrast to quantitative approaches, which tend to rely on the availability of large data sets which are usually obtained through survey census or sampling methods (Smelser 1976: 205) and are then subjected to multivariate statistical analysis, qualitative approaches tend to be limited to the investigation of only a few cases at most since it is difficult to sustain attention to complexity across a large number of cases. In technical terms, the subjectivist idiographic orientation of this study leads to a 'small-N qualitative case-oriented' research design. In this case, N is very small indeed. It consists of a single case: the multi-level system of employee interest representation at DaimlerChrysler. At the same time, the case study includes further cases within it; because the research covers two levels – i.e., the central works council and its articulation with the local works councils – N is larger with respect to the level of sites and their interactions. The choice of the single case study approach has been chosen because of the necessarily explorative character of the research<sup>15</sup>. As there is no in-depth empirical investigation of the internal processes of interest aggregation

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<sup>15</sup> Indeed, although the original intention was to compare the approaches to potentially divergent interests within a German *Gesamtbetriebsrat* and a French *comité de groupe*, the lack of any prior research on the subject in either country quickly led to the decision to focus on a single case.

and decision-making within CWCs, this research has ventured into largely uncharted territory.

According to Yin, “a potential vulnerability of the single-case design is that a case may later turn out not to be the case it was thought to be at the outset” (1994: 41). In order to minimise the chances of misrepresentation and to maximise the access needed to collect the case study evidence, the beginning of fieldwork at DaimlerChrysler was preceded by a phase of participant observation at the EWC Team of the German metalworkers’ union IG Metall. Although I was researching the EWC work of the IG Metall, discussions held during my time at IG Metall with the FTOs responsible for advising a range of CWCs allowed me to gain an understanding of the wide variety of ways in which CWCs actually operate in practice. It also gave me an excellent opportunity to ensure that the company I would selected for the case study would indeed be a ‘critical’ or ‘revelatory’ case (Yin 1994).

The CWC at DaimlerChrysler was selected for three reasons. First, the CWC at DaimlerChrysler was clearly a very professional and well-organised committee: its ‘best practice’ could thus serve as a particularly instructive case for the investigation of the ways in which CWCs could operate. Since the main objective of this research was to understand how solidarity can be generated within the CWC and to identify the possible lessons for EWCs, this was an important criterion. Second, in order to at least in part be able to assess the gap between rhetoric and reality, I wanted to be able to focus my research on a critical experience. During the course of parallel employment security negotiations, the ability of the CWC at DaimlerChrysler to develop – and maintain – a common line was severely tested. Since this experience had taken place several years prior to my fieldwork there, I hoped that the dust would have settled enough for me to gain access to the detailed progress of that critical experience in the collective consciousness of the CWC. The third reason for selecting DaimlerChrysler was that the head of the department at IG Metall where I was working, who had been the national-level trade union coordinator for DaimlerChrysler for the past 25 years, offered to arrange full access at DaimlerChrysler for me.

## **4.2. Methods**

From the subjectivist idiographic orientation of this study, the application of ‘ethnographic’ data gathering techniques is almost automatic. Since the core aim of the research was to unearth the interests and motivations underlying the social interaction processes in the CWC, it was imperative to get as close as possible to the individual actors in order to penetrate the frames of meaning within which they operate.

Furthermore, this study relies on the use of multiple sources of evidence comprising participant observation, semi-structured interviews, documentary analysis as well as



the use of survey evidence. The strength of this triangulation approach is that it enhances the scope and breadth of the investigation by covering a broader range of historical, attitudinal and behavioural aspects, which increases the plausibility of the case study findings and conclusions (Yin 1994: 92). According to Bryman, the combination of different data gathering techniques furthermore “allows inferences or ‘leads’ drawn from one data source to be corroborated or followed up by another” (1995: 47).

### **Participant observation**

The application of the method of participant observation took place in two phases. The first phase, which took place from January until April 1999 at the EWC Team at the IG Metall served primarily two purposes. First, I sought to gain an understanding of the current state of play in EWC practice. My second objective was to prepare for the second phase of participant observation at my case company from July until April of the same year. Following Gans’ distinction between different activities involved in doing participant observation both my stays saw me performing three different roles: total researcher, researcher participant, and total participant (Gans in Bryman 1995: 48).

#### *Participant observation at IG Metall’s EWC Team*

The EWC Team is centred in the department of the IG Metall headquarters which, among other tasks, advises employee representatives in the largest German firms in the metal sector. Thus, the members of this department advise and facilitate meetings of the CWCs, and usually sit on the supervisory boards as external employee representatives. As a total researcher, I had the opportunity to observe CWC and EWC meetings and negotiations in the company of any one of the four FTOs with whom I worked most closely. Although my main focus lay on understanding EWC practice, I also had the opportunity to observe meetings of the CWCs of several different companies. This not only contributed to a better understanding of the overall duties and different modes of operation of CWCs in the German IR context, but it also allowed me to select the most appropriate ‘lead’ case for my case study, and to be able to place the goings-on of the CWC at DaimlerChrysler within a wider comparative context. Through my discussions with FTOs at the IG Metall, I also learned much about the internal political processes which take place behind the scenes. The relevance of my central question about interest aggregation and the generation of solidarity was also confirmed as one of the key challenges facing CWCs and EWCs. My attendance at CWC meetings at DaimlerChrysler during this research phase also

served a practical purpose, since it enabled me to meet the CWC members and arrange access personally with the support of the FTOs.

As a research participant, I participated in CWC, GWC, and EWC meetings. As an intern, I participated not as a representative of the IG Metall but as an 'outsider'. This proved especially helpful in informal settings, since works councillors and union activists were more open with their views and I was thus able to obtain a more differentiated understanding of the activities of the IG Metall. This would most likely not have been possible if I had had the status of an 'insider'.

Finally, as a total participant I was actively involved in the work of the EWC Team. I developed an information folder for IG Metall's EWC coordinators, who as a rule are the FTOs responsible for advising the CWCs or group works councils of German companies. Actively participating in the day-to-day work of the EWC Team helped me to understand the changing context of EWCs, their past, present and possible future priorities, and the difficulties of advising them on a European level.

#### *Participant observation at the CWC office at DaimlerChrysler*

I conducted my participant observation at DaimlerChrysler about six months into the term of office of a new CWC Chairman. This meant that the slight turbulence surrounding his election had subsided, and the first effects of his new style of leadership could already be felt. This proved to be a recurring point in the interviews. Furthermore, I was fortunate enough to be able to begin my observation in July 1999 by participating in a week-long seminar whose focus lay in discussing and possibly adapting the CWC's working structures. This amounted to a week-long focus group addressing a key subset of questions about the expectations and limits of the CWC's work. It also gave me the opportunity to meet all the CWC members at once and present my project to them. Like the CWC office staff, I acted as facilitator for one of the working group sessions at the seminar.

In the course of my fieldwork at DaimlerChrysler, I participated in all regular meetings of the CWC and in meetings of the various commissions and working groups. For example, I attended the entire circuit of regional meetings held for the Sales and Service establishments. In this series of meetings the agenda was roughly the same, but the discussions were quite different from meeting to meeting. This experience helped to sharpen my sense of how differently the same subject can be assessed and discussed by different groups of people. Overall, the opportunities to observe meetings and discuss them with the Secretariat staff afterwards provided me with unique insights in and first-hand information about the internal workings of and political processes within the CWC.

All in all, the entire research process benefited considerably from the application of the technique of participant observation. First, it enabled me to collect factual information about the actual work and function of the CWC at DaimlerChrysler and to understand events and behaviour in their specific organisational context. Second, it allowed me to explore the underlying motivations of the CWC members. Third, from a practical point of view, my stay at DaimlerChrysler as a participant observer also helped to develop and implement the next steps in my research design. First, I was given access to relevant documentation, such as the minutes of the series of meetings held during the 1996-7 phase of parallel local-level negotiations. Second, the insights gained during my stay informed both the questionnaire and my semi-structured interview schedule; for the survey questionnaire in particular, this meant that both in terms of content and terminology it fit into the day-to-day context of the respondents. Finally, in many cases, the fact that I knew the CWC members personally by the time I approached them for an interview increased their willingness to take time for the interviews.

Despite these benefits, participant observation creates its own bias. This particular technique may not be able to capture all relevant situations and processes. In critical and particularly sensitive decision-making situations, for instance, the presence of a participant observer may be inappropriate or simply not allowed. Therefore, in order to fill in the missing pieces and to enhance the scope and breadth of the investigation, it is essential to employ complementary data gathering techniques. Next to the postal survey, which explicitly aimed to control for widely divergent views of the role of the CWC among its constituents, other methods such as semi-structured interviews and the analysis of relevant documents helped to fill in gaps and compensate for the inevitable personal bias.

## **Interviews**

The strength of semi-structured interviews as a method is that it leaves considerable room for the interviewees to express their perception of the CWC's activities and functions in their own terms (Jones 1993: 56). It also allows the investigator to probe more deeply and to uncover new dimensions (Burgess 1984; Walker 1993). In conducting the semi-structured interviews, I had a set of issues and key questions I wanted to cover. At the same time, I was able to concede some control of the interview to the interviewee by allowing him/her to 'ramble'. As Measor points out, 'rambling' is revealing because the interviewee "is moving to areas which most interest him or her" (Measor in Bryman 1995: 46). In the case of this investigation, the interviewees' 'rambling' enabled me to get information not only about those aspects of the CWC's activities that are of central concern to them, but also about how the CWC features within the context of their day-to-day activities. This was an important exercise to

obtain a rounded notion of the different perceptions of the role of the CWC in the broader context of the multi-level system of employee representation at DaimlerChrysler.

### *The semi-structured interview*

The interviews with the CWC members and guests were conducted on the basis of an interview schedule which had been developed based on the research questions and informed by the observations gathered during the 3-month participant observation, as well as my analysis of the minutes of the CWC meetings held between February 1996 and April 1997.

The interview schedule was divided into three main sections. The interview schedule, whose basic structure remained the same for all interviews, contained both specific questions as well as more open-ended questions.

The first section contained specific and standardised questions about the respondents' personal background. They were asked how long they had been a member of the local works council and the central works council, and what offices they currently held or had held in both committees. The respondents were also asked to indicate any other committees, such as CWC-subcommittees, of which they are members, as well as whether they were members of CWC committees before becoming a member of the CWC itself. The respondents were also asked how long they have worked for the company, whether and for how long they were members in the IG Metall, and whether they received training from the IG Metall. The respondents were also asked whether they were active in a political party.

The second section of the interview schedule consisted of open-ended questions about the respondents' perceptions of and expectations about the role of the CWC and its commissions. Respondents were also asked about interdependencies between sites and effects of these on their role as intermediaries between the local and central levels of employee representation within the company. They were asked about the criteria according to which an issue was dealt with at the local level or the central level.

The third section of the interview schedule focussed on the series of negotiations about employment security agreements which were conducted at each site in parallel between February 1996 and April 1997. The actual negotiations were conducted at the local level, but central coordination in the CWC had aimed to ensure that the provisions agreed at local level were in some ways functionally equivalent to provisions agreed at other sites. In the end, a central framework agreement was also signed complementary to the local agreements. The questions in this section focussed on a retrospective assessment of this process of parallel negotiations. Based on the

documentary analysis of the minutes of the CWC meetings during that time, as well as the comparative issue-by-issue analysis of the final agreements concluded at each site, the questions sought to re-trace the course of these negotiations with specific reference to the actual provisions which were agreed in stages at the local level in light of the ongoing attempts to centrally coordinate those negotiations. The questions relating to the actual agreements signed at the local level were different for each site, however. The empirical data about the parallel employment security negotiations, however, is not included in the present analysis. It emerged during the course of the research that the rather controversial 'denouement' of the story lay in the hands of the former Chairman of the CWC, Karl Feuerstein. Feuerstein had suddenly passed away just prior to the beginning of my field research; this made it very difficult for the CWC members to speak openly about the ways in which the conflict was resolved. While I might have been able to 'get to the bottom' of the story on the basis of the documentary evidence, without the benefit of candid interpretation by the main actors, it would have been necessary to go into great detail to explore the ways in which 'equivalence' was achieved across sites. This necessarily highly technical discussion would have been beyond the scope of the present research.

The final section of the interview revisited the issue of central vs. local competence in light of the interviewers' account of the parallel negotiations on employment security. Respondents were also asked to reflect on the presence or absence of implicit dividing lines or faults in the CWC, whether they be between the automotive or utility vehicle divisions, between white- and blue-collar workers, between the north and the south, or between east and west, for example. Finally, respondents were asked to explain what the notion of solidarity meant to them.

To sum up, the interviews had a built-in choreography: respondents were first asked basic and unobtrusive questions about their personal background; this proved a useful warm-up phase to establish a constructive and open atmosphere for the interview. The second section about the actual work of the CWC gave them an opportunity to expand on their expectations about and experience in the CWC, and allowed me to follow up with questions aimed at uncovering the more sensitive aspects of the power issues involved. By this stage, rapport in the interview was in most cases well established. The third section about the parallel site negotiations was the most sensitive and therefore most difficult section of the interviews. The questions were at first more technical due to the focus on the course of the negotiations and the specificity of the agreements; it therefore seemed quite straightforward and perhaps less politically sensitive—especially since the CWC has since implicitly developed a common joint account. This shared retrospective account, however, is not borne out by my analysis of contemporary documentation (the minutes and a detailed comparison of the actual agreements). While these discrepancies allowed me to probe a bit more deeply in the

interview, my ability to fully clarify what happened was limited by the respondents' necessarily retrospective view. During the final phase of the interview, the respondents were able to take a bird's eye view of the CWC and their understanding of solidarity in light of the preceding discussion.

The bulk of the interviews were conducted between September 2000 and June 2001. The fact that the interviews were conducted over a period of 18 months gave me the opportunity to refine my questions and ability to probe, and also to chart the ongoing shifts in the CWCs internal culture.

All in all, I conducted 33 interviews. Of the full members of the CWC, I interviewed 28 out of 30 members. I interviewed all 12 chairs of the plant works councils, and 11 out of 12 vice-chairs. I interviewed four out of the five representatives of the sales and service establishments, and the single representative of the R&D sites. Several people had retired in the course of my research and were no longer available for an interview: the former vice-chair of the works council at Mannheim, and one of the five representatives of the Sales and Service establishments.

Of the guests in the CWC, I interviewed four out of the five guests from subsidiary automotive companies. I interviewed the Chair of the Works Council at DaimlerChrysler Ludwigsfelde, a subsidiary company in former East Germany which produces the same models as are produced by the plants owned by DaimlerChrysler. I also interviewed the Chair of the CWC at EvoBus GmbH, a company which makes buses in parallel to the plants owned by DaimlerChrysler.

I interviewed the full time IG Metall official responsible for DaimlerChrysler at national level; Although he has since retired, he had been advising DaimlerChrysler for about 25 years and was also a member of the supervisory board. During my participant observation, I worked closely with all six assistants to the CWC. I conducted an in-depth background interview with the member of CWC staff who was most familiar with the employment security agreements negotiated between 1995 and 1997.

I got to know all members and guests of the CWC during my participant observation which took place before the interview phase. For reasons of time constraints, there were several people whom I did not formally interview, however, although their views have certainly also informed this research. I did not interview the following guests in the CWC: the Vice-Chair of the works council of DaimlerChrysler Ludwigsfelde, because he retired in the course of my research; the Chair of the works council at Mercedes Benz Lenkungen GmbH, an outsourced company which makes steering systems in Düsseldorf and which has since been sold; the Chair of the CWC at Mercedes Benz Vertriebsgesellschaft (MBVG), a separate dealership and service company with establishments in the new German *Länder*; the only employee

representative on the Supervisory Board at DaimlerChrysler who is not formally a member of the CWC; the Chair of central disabled persons' representation council (GSBV); or the Chair of central youth and apprentice representation council (GJAV). A list of interviews can be found in the Appendix.

### **Documentary analysis at IG Metall and DaimlerChrysler**

The analysis of CWC Documents was an integral part of the research. These included internal memoranda, minutes of meetings, official policy papers and other written reports. Although, as Yin emphasises, it is important to keep in mind that any document analysed "was written for some specific purpose and some specific audience other than those of the case study being done" (1994: 82), documentary analysis is a useful tool to capture the historical dimension of current events: the link between past and present events may not be directly observable, and memory tends to be selective. Some important events of the past may have been forgotten, purposefully not reported in interviews, or the account of past events may be heavily coloured by individual *ex post* rationalisations of behaviour. As mentioned above, this proved quite true with respect to the 'critical experience of the CWC in 1996-7, there was a marked discrepancy between CWC members' later accounts of the series of parallel site negotiations and the actual sequence of events as documented by the minutes. At the same time, since the minutes can also not be taken as statements of fact, but rather are at the same objectified yet politicised versions of events, I was unable to gain a complete picture through the minutes either. This example makes clear how useful documentary and archival analysis can be to corroborate, refute, or augment evidence obtained through participant observation and/or interviews.

### **Postal Survey**

In order to gain insights into the ways in which local works council members perceived the role and purpose of the CWC as its constituents and – at the very least – to control for any widely divergent perceptions, a postal survey was administered among the local works council members of the production sites at DaimlerChrysler.

In March 2001 I conducted a pilot phase: five works council members from different plants were asked to fill out the questionnaire. They were asked to assess the survey, in particular with respect to the clarity and appropriateness of the individual questions. In response to their feedback, several questions were rephrased and the final questionnaire was printed.

The first section of the questionnaire focussed on personal information. The second part contained questions about their opinion-forming processes at the local level, their sources of information, their assessment of the work of the CWC and their perception of the development of overall employee representation strategy across the company. In the third section works council members were asked to agree or disagree with a range of statements culled from individual discussions with works council members. They were also asked to indicate the degree of their satisfaction with various aspects of the work of the CWC. The goal of this core of the survey was to find out to what extent certain points of view were broadly held, as well as to explore the political backdrop to the work of the CWC. The final section of the questionnaire explored the wider arenas into which local works council members' political activity is embedded, for example in the union or in political parties. Respondents also had the opportunity to submit comments about the survey itself or about the issues raised in the survey.

### *Anonymity*

The survey was anonymous: respondents were not asked to give their name or their address. The questionnaires were only marked with the names of the plant in which it was distributed in order to keep an overview of the return rate. It was at no point possible for me to draw conclusions about individual respondents.

The questionnaire was accompanied by an explanatory letter signed by me and by the data protection registrar at the Science Center Berlin. This accompanying letter gave assurance that the collected data would only be used for the purposes for which it was collected, reiterated that no individual data would be collected or could be deduced, and gave a basic example of the way in which the data could be used. The survey was duly registered with the state data protection agency, as required by German law.

### *Distribution of the questionnaire*

In May 2001 the questionnaires were distributed to the local works council members. I included a covering letter from me which explained the background to the research. Respondents were also given a reply-card on which they could indicate whether they wished to receive more information on the research project. They could also request a copy of the final report on the survey. Some 80 respondents asked for the final report. The questionnaire, the covering letters from me and the data protection registrar, the reply card, and an addressed return envelopes were sealed in individual envelopes. These envelopes were sent as a package to each works council chairman with an accompanying letter asking them to distribute them to their local works council



members. As a rule, the envelopes were distributed in the works council members' pigeonholes without further explanation by the works council chairmen. The Chair and Deputy Chairs of each local works council were exempted from the survey, since they are themselves members of the CWC.

**Table 1: Local works council members at DaimlerChrysler factories**

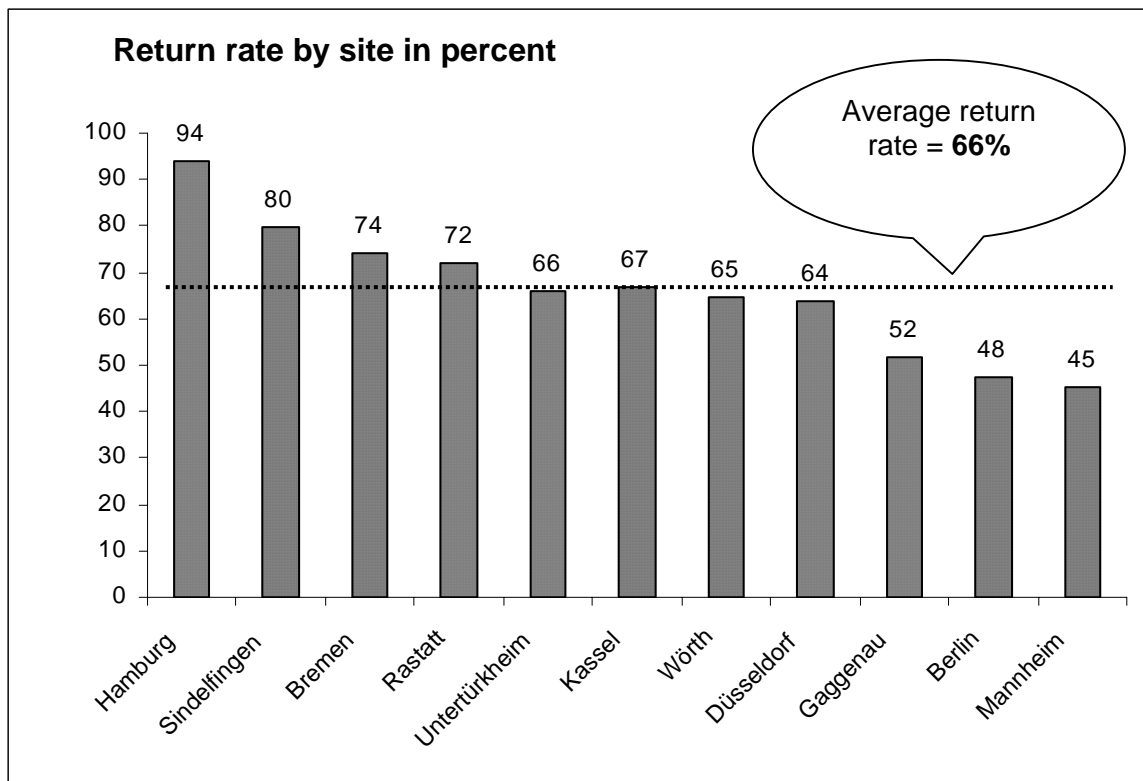
<b>Plant</b>	Number of Works Council members not including the Chairman and Deputy Chairman
Hamburg	17
Kassel	21
Berlin	21
Rastatt	25
Düsseldorf	25
Gaggenau	29
Wörth	31
Mannheim	31
Bremen	35
Untertürkheim	41
Sindelfingen	49
<b>TOTAL ALL PLANTS</b>	<b>325</b>

### *Response rate*

A total of 325 questionnaires were posted. 215 completed questionnaires were returned: this represents a very solid return rate of 66%. Across the plants the return rate varied from 94% of the works council in Hamburg to 45% of the works council in Mannheim (See *Figure 2: Return rate by site*).

The size of the plant and by extension the local works council seems to have had little influence on the return rate. Significantly higher return rates were reached from the smallest plant (Hamburg = 94%) as well from the largest site (Sindelfingen = 80%).

**Figure 2: Return rate by site**

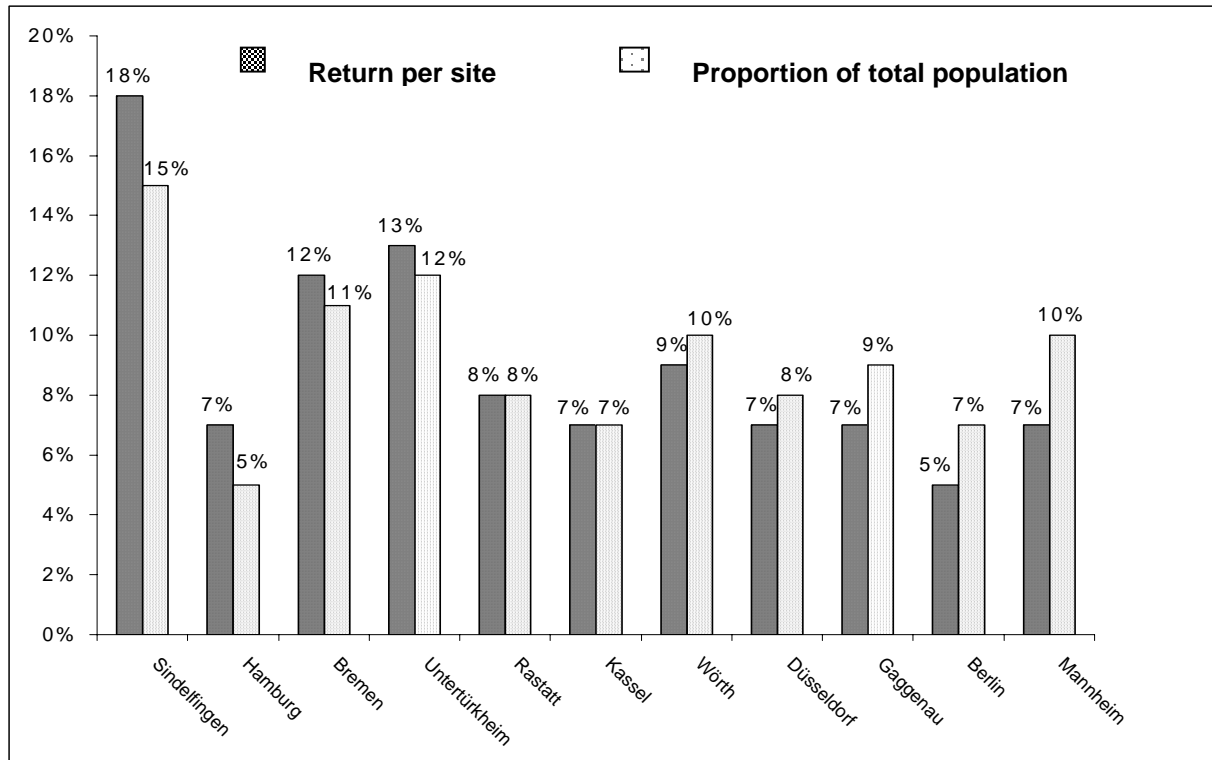


### **Representativeness of survey results**

In order to assess the extent to which the data can be considered representative, the key test was to see whether the distribution of returned questionnaires mirrors the different sizes of each local works council. The ratio of local works council members to the total number of works council members in all plants was therefore compared with the distribution of the questionnaires across sites. This analysis yields that that some plants are slightly overrepresented while others are slightly underrepresented. While the Sindelfingen plant is overrepresented in the data pool by about 3%, the Mannheim site is underrepresented to the same degree. The plants at Hamburg, Berlin, and Gaggenau are either over- or underrepresented by about 2 %. The ratio of returns from Bremen, Untertürkheim, Würth and Düsseldorf deviates by 1 % from their respective proportions of the total population of plant works councils. The returns from the plants in Rastatt and Kassel correspond exactly to the relative size of their works councils. Since no site is over- und underrepresented by more than 3%, the data is not

significantly skewed towards any site. The data can therefore be considered to be representative. (Figure 3: *Representativeness* compares the ratio of returned questionnaires per site with that site's portion of all works council members).

**Figure 3: Representativeness**



In Summer 2002 I began working at IG Metall Headquarters in the department of union policy and strategy in the workplace. Next to working within the EWC Team, I was also a member of the team which had been recently set up to develop a more coherent strategy towards central and group works councils and to better support the union officials who served as their advisors. In January 2003, I took on the position as head of the IG Metall's EWC Team.

While I had long worked closely with CWC and EWC practitioners, I had still been an outsider conducting research until I began working for IG Metall. As participant observer at both the IG Metall and at the CWC at DaimlerChrysler, in conducting the in-depth interviews with CWC members and in administering the postal survey, my institutional affiliation lay clearly with Warwick University and the Wissenschaftszentrum Berlin. Indeed, this was another contributing reason put forward by my "gatekeepers" at DaimlerChrysler: they introduced me to the CWC as someone who could provide an outside view.

Once I began working for IG Metall, however, I became an insider. Taking on overall responsibility for the IG Metall's EWC activities, together with my ongoing work with central and group works councils, brought a number of the questions I had been researching sharply into focus. The more I was confronted with the challenges and opportunities provided by cross-site cooperation among employee representatives within complex company structures, the more these insights informed the process of writing up the findings of my research. Working directly with central, group, and European works councils and contributing to the further development of the IG Metall's and the European Metalworkers' Federation's policy and strategy on cross-site employee interest representation thus enabled me to continually test my evolving analysis and interpretations against the wide range of real-life examples I encountered on a day to day basis. In particular, this exposure served to hone my analysis of the ways in which employee interest representation must be grasped as a multi-level, essentially federalist system, in which a balance must be found between diversity and unity, regardless of whether this takes place within one country or across borders.

## **Chapter Five: The Central Works Council at DaimlerChrysler: a Case Study**

### **5.1. Introducing the case study: the central works council at DaimlerChrysler**

At the time that this study was being conducted, from 1999 to 2002, the provisions of the 1972 Works Constitution Act (*Betriebsverfassungsgesetz: BetrVG*) were in force.

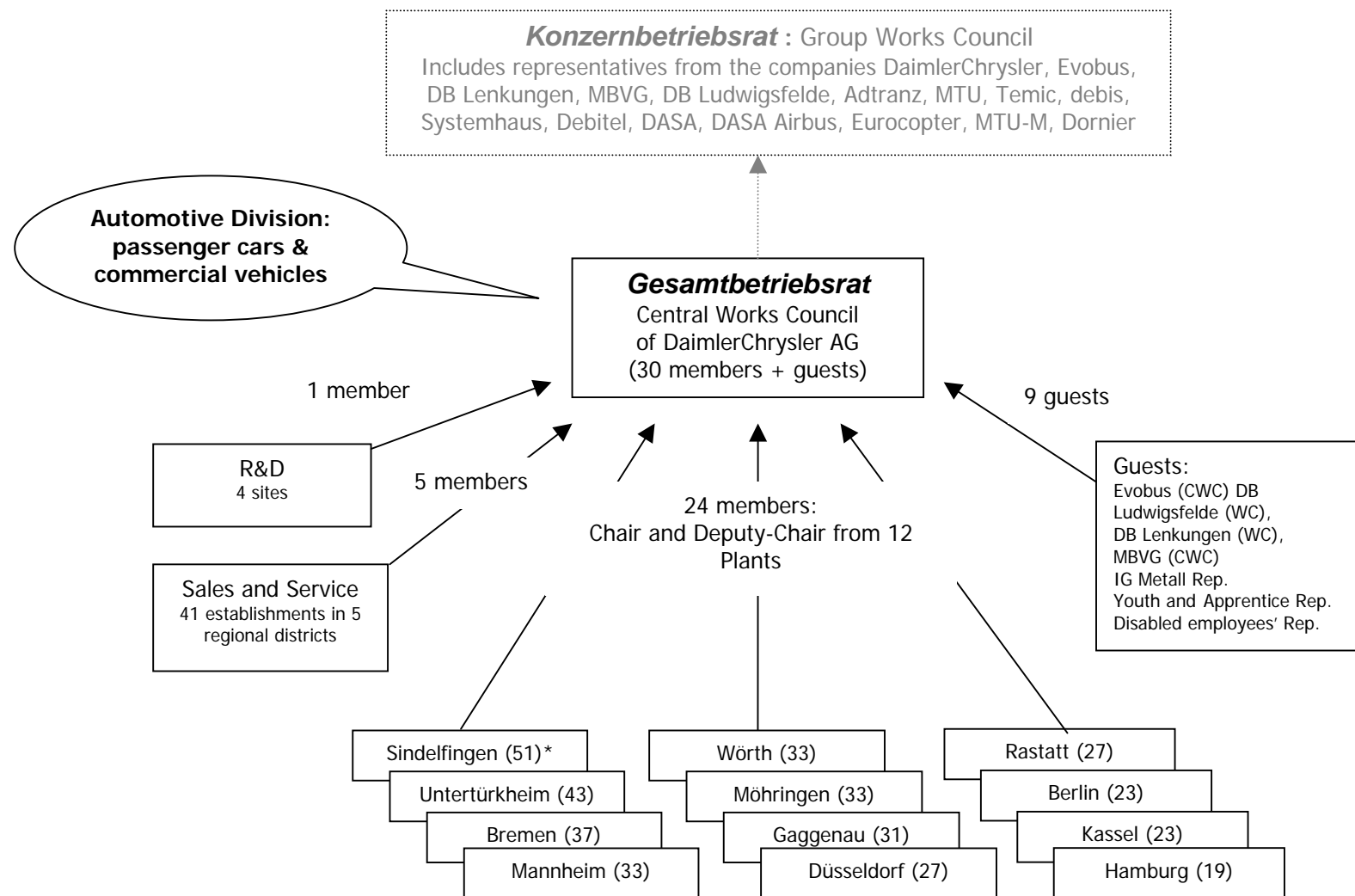
DaimlerChrysler thus has local works councils (*Betriebsräte*) in all its establishments, a Central Works Council (*Gesamtbetriebsrat*) covering its automobile and commercial vehicle divisions, and a Group Works Council (*Konzernbetriebsrat*) covering its activities in all sectors; next to automotive production, DaimlerChrysler in 1999 also had subsidiary companies active in railway rolling stock and technology (Adtranz, MTU, Temic), information and communication technology (debis, Systemhaus, debitel), and aerospace (DASA, DASA Airbus, Eurocopter, MTU-M, and Dornier).

This study focuses only on the Central Works Council (CWC) (*Gesamtbetriebsrat*), which covers the motorised vehicles division which produces passenger cars and commercial vehicles. (i.e., lorries, buses, vans, and special-purpose vehicles such as fire engines, ambulances, street sprinklers, etc ).

#### **The CWC at DaimlerChrysler**

As seen in Figure 4, the CWC at DaimlerChrysler AG is the peak level of representation structures for the divisions in the company producing passenger cars and commercial vehicles.

**Figure 4: Works council structures at Daimler Chrysler AG (1999)**



\* Figures in parentheses indicate the number of local works council members.

**Table 2: The Works Councils at DaimlerChrysler AG in 1999**

<b>Works councils (<i>Betriebsräte</i>) at:</b>	<b>Total number of works council members</b>	<b>Total number of employees represented</b>	<b>Blue collar</b>	<b>White collar</b>
12 plants	380	132,938	96,737	36,201
41 dealerships and service establishments; logistics/ parts warehouses	341	16,589	7,814	8,775
4 R & D sites	36	1,546	15	1,531
TOTAL	757	151,073	104,566	46,507

The CWC at DaimlerChrysler AG is made up of 30 full members. The CWC meets in plenary ten times per year. Although the *BetrVG* does not stipulate that the chair and deputy-chair of the local works council are to be delegated to the CWC, this is more or less automatically the case at DaimlerChrysler, as in many other German companies.

### **Manufacturing Plants**

The works council of each DaimlerChrysler factory in Germany delegates two members. Although the CWC at DaimlerChrysler very rarely puts issues to a formal vote, the fact that the plants together represent 88% of the employment in the company means that the production sites in effect dominate the CWC.

### **Sales and Service Establishments**

Next to the 12 production plants, DaimlerChrysler AG also has 41 Sales and Service establishments across Germany. Spread as they are across forty-one sites, these Sales and Service establishments (*Niederlassungen*) (S&S) elect nearly half the works councillors in the company although they only represent just under 11% of the total workforce.

The *BetrVG* stipulates a maximum number of 40 CWC members, unless alternate arrangements have been negotiated under §47(4) of the *BetrVG*. If each of the 41 sales and service establishments and each of the four research and development sites were to delegate members directly to the CWC, then it would have well over 100 members. The CWC therefore negotiated an agreement with the company whereby the works councils of the sales and service establishments and the R&D sites delegate as groups. The four research and development sites collectively delegate one member to represent

them in the CWC. The 41 sales and service branches are organised into five regional districts (*Bezirke*), each of which is entitled to send a representative to the CWC. The chairs and deputy chairs of each local works council in the sales and service establishments meet at least twice a year at five regional district conferences following meetings of the CWC. A chair and deputy-chair are elected from each district; the chairs of these regional district conferences are the representatives of the S&S establishments in the CWC. Perhaps more importantly, they also comprise the S&S commission (NLK: *Niederlassungskommission*) of the CWC, which serves as a central works council for the forty-one Sales and Service establishments. In other words, there is effectively a CWC within the larger CWC at DaimlerChrysler for the sales and service sites.

In 1999, the logistics (parts) departments of the company were due to be reorganised into Euro-Logistic Centers (ELC) and Global Logistics Centers (GLC). For the time being, these are included in the representation structures of the Sales and Service establishments. This may not remain the case, as they are increasingly directed from a different managerial arm than are the S&S. This means that effectively they have a different managerial counterpart than do the S&S and are consequently “out of the loop.” A case could be made that the ELCs and GLCs set up their own CWC structures. For the time being though, the specific interests and issues of importance to the GLCs and ELCs are taken up by the S&S Commission in the CWC in the form of a regular agenda point and a request for a (regular) meeting with the company’s Executive Director of Logistics.

### **Guests in the CWC**

According to the *BetrVG*, only those establishments which formally belong to the automotive division of DaimlerChrysler AG are officially entitled to be members of the Central Works Council for the automotive division. However, there are a number of subsidiary companies belonging to the DaimlerChrysler group which are also active in the automotive division. Next to production sites and sales and service establishments in the former East German states which for legal reasons have remained separate companies, these include subsidiary companies such as Mercedes Benz Lenkungen GmbH, an outsourced part of Mercedes Benz AG which makes steering systems, and EvoBus GmbH, which makes buses.

The activities of these subsidiary companies are intricately linked to the activities of the main automotive division of Daimler Chrysler AG. In this sense, the legal company structure does not reflect the operative links between companies belonging to the



group. These subsidiary companies are represented in the top-level Group Works Council, but they are not by right members of the CWC. However, because industrial relations in both the main DaimlerChrysler automotive division and the subsidiary automotive companies have implications for one another, the activities and policies of the works councils at the subsidiary automotive companies are politically relevant to the CWC. Representatives of these subsidiary companies are therefore invited to attend CWC meetings as guests, so that their respective IR strategies can be better aligned with one another and with the main automotive division.

### **The CWC Secretariat**

The day-to-day work of the CWC is supported by nine full-time staff who make up the CWC secretariat. Compared with other German companies of comparable size and reach, the elaborate secretariat at DaimlerChrysler is perhaps matched only by that at Volkswagen. As Herbert Lucy, Chairman of the Central Works Council from 1973 to 1989, writes in his biography, it was his insistence on expert assistance which laid the foundation for today's well-staffed secretariat.

When Lucy took office in 1973, the CWC secretariat consisted of a single administrative secretary. Soon thereafter, management agreed to hire a former engine fitter who had gone on to become captain in the military to act as 'office manager' for the CWC. Even this reinforcement quickly proved insufficient, so Lucy requested further expert assistance. He writes,

I asked Schleyer [Personnel Director] to approve the hiring of a second CWC-Secretary. At first, Schleyer refused, upon which I said to him: "Please take note that I will in future refuse any proposal which I am not in a position to assess. I will not let myself be taken for a ride." In reply to his objection that everything had gone fine until now, I answered that I was now Chairman and that he would have to get used to it. Either he supplied me with enough personnel or he would have to assume that nothing much would move at the negotiating table. This was language he understood (Lucy 1993: 103).

In the end, management consented to fund two further experts for the CWC secretariat: an expert in time and motion studies, who advised Lucy on piecework rates, wages and salaries, and an economist who supplied Lucy with economic analyses.

In 2001, the CWC secretariat boasted three secretarial assistants, one lawyer, one economist, one sociologist and three former works council members. This mixture of

both professionally trained external staff and experienced in-house 'political' figures drawn from the ranks of the works councils is intended to ensure both the professionalism and expertise of the work of the secretariat as well as a political closeness to the realities of workplace interest representation and the experience of working in the company.

### Meetings of the CWC

Thus, a meeting of the CWC at DaimlerChrysler can be attended by as many as 45 people:

**Table 3: Participants in CWC meetings at DaimlerChrysler in 1999**

#### **Members of the CWC:**

12	Chairs of the 12 plant works councils
12	Deputy-chairs of 12 plant works councils
5	Representatives of dealerships & service districts
1	Representative of R & D sites
<b>30</b>	<b>TOTAL full members</b>

#### **Also attending**

##### **5 guests from subsidiary automotive companies:**

	Chair of CWC at Mercedes Benz Vertriebsgesellschaft (MBVG), a separate dealership and service company with establishments in the new German <i>Länder</i>
	Chair and Deputy-Chair of the Works Council at DaimlerChrysler Ludwigsfelde, a production company in the new German <i>Länder</i>
	Chair of the CWC at Mercedes Benz Lenkungen GmbH
	Chair of the CWC at EvoBus GmbH

##### **4 further guests:**

	IG Metall full time official responsible for DaimlerChrysler at national level
	Employee representative on the Supervisory Board at DaimlerChrysler
	Chair of central youth and apprentice representation council ( <i>Gesamtjugend- und Auszubildendenvertretung: GJAV</i> )
	Chair of central disabled persons' representation council ( <i>Gesamtschwerbehindertenvertretung: GSBV</i> )

##### **6 Assistants from the CWC Secretariat**

***TOTAL: Up to 45 participants in all***

## **The CWC substructure: commissions, negotiation committees, project groups and working groups**

In accordance with the *BetrVG*, a nine-member executive committee of the CWC at DaimlerChrysler has been established – at least on paper. As provided for by the *BetrVG*, the CWC has also set up wide range of subcommittees. It is here that the real work of the CWC takes place: in the standing commissions, negotiating committees, project groups, and working groups. There are about 14 formal standing commissions and at least 26 negotiating committees, project groups, and working groups. Taken together, the standing commissions, negotiating committees, project groups, and working groups form a highly complex and wide ranging sub-structure to the CWC itself.

The role of these commissions, sub-committees and project groups will be discussed further in Section 5.3 below. See also Figure 21: *Committees, Commissions, Project Groups, & Task Forces of the CWC at DaimlerChrysler (1999)*

### **Annual works council assembly (*Betriebsräteversammlung*)**

As required by Section 53 of the *BetrVG*, an annual assembly of all the executive committees of all the local works councils at DaimlerChrysler AG is convened, normally in October. The first day is reserved for the representatives from the Sales and Service establishment, while the second day includes the plant representatives as well. Up to 300 works council members participate in this event. At this meeting, the CWC distributes a written Annual Report, reports on its activities, and fields questions and statements from the works council delegations. The employer is also required to report on the social and financial affairs and trends in the company, and to respond to questions and statements from the works council delegations.

Commonly referred to as the ‘October Revolution’ by CWC members and local works council members, it is here that the CWC sees itself as being called to account for its activities over the year. The complete Managing Board of DaimlerChrysler is also present for part of each day. For many works councillors, and in particular for those from the S&S branches, this represents the only opportunity to address both the managing board directly (i.e., to bypass the CWC as interlocutor) as well as to address the CWC itself.

## The Members of the Central Works Council

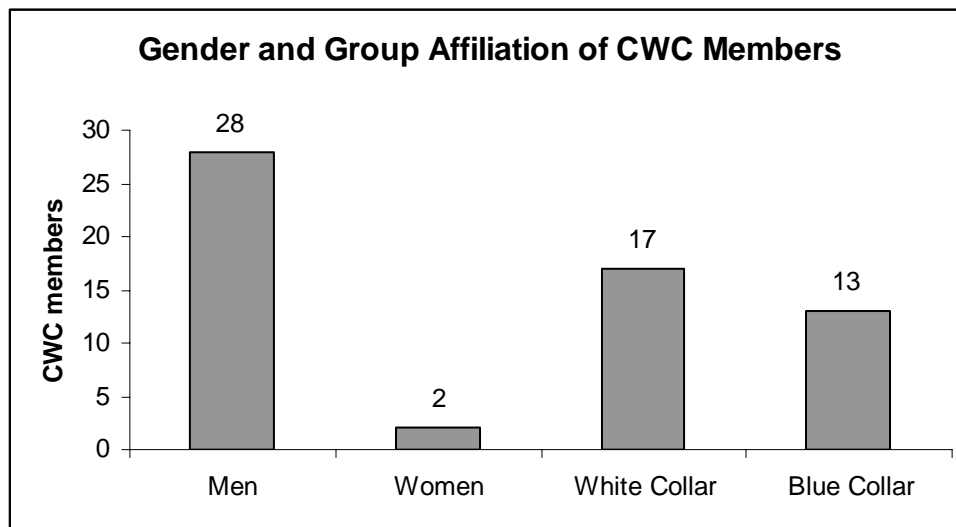
Before moving on to examine the working of the CWC in more detail, it is useful to have a closer look at the 30 full members of the Central Works Council at DaimlerChrysler as it was staffed in 1999.

**Table 4: Full members of the CWC**

Full Members of the CWC:

12	Chairs of the 12 plant works councils
12	Deputy chairs of 12 plant works councils
5	Representatives of dealerships & service districts
1	Representative of R & D sites
30	TOTAL

**Figure 5: Gender and group affiliation of CWC members**



### Gender

Perhaps not surprisingly, the vast majority of CWC members are male. As will be seen in Section 5.2 below, 15% of works councillors at the local level are women; however, because the position of Chair or Deputy Chair is the informal prerequisite for delegation to the CWC at DaimlerChrysler, the only two women who are full members of the CWC are the Deputy Chair of the Berlin plant (who has since been elected Chair), and the representative of the R&D sites. Among the nine guests who attend CWC meetings, however, there are two more women: the Chair of the Central Works

Council of the separate dealership and service company in the new German States, and the Deputy Chair of the local works council at the production plant in Ludwigsfelde, which lies just outside Berlin. Interestingly, both are from the former East Germany, where women have traditionally played a more active role in workforce representation than they did (or still do) in former West Germany.

### **White-Collar and Blue-Collar**

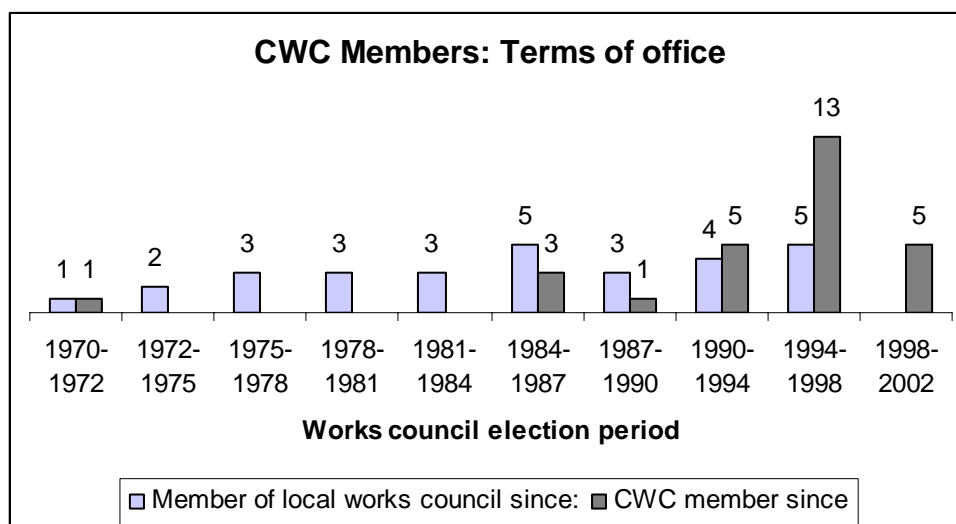
In absolute figures, the proportion of white- and blue-collar representatives is skewed in favour of the white-collar representatives. Until 2001, the *BetrVG* required that both white- and blue-collar representatives be delegated to the CWC in order to ensure the representation of minority interests. This differentiation has since been dropped; it is expected to remain the rule at DaimlerChrysler, however. This means that the 12 plants each delegate one white-collar representative, who as a rule is the Deputy Chairperson of the local works council. With one exception, the Sales and Service sites are represented by former sales (i.e., white collar) employees. The representative of the R&D sites is also a white-collar employee.

It should be borne in mind, however, that since decisions within the CWC are taken by weighted majority vote, the blue-collar representatives could outvote the white-collar employees by a ratio of over two to one. (See Table 2 above: *The CWC at DaimlerChrysler in 1999*) Now that the distinction between white and blue-collar workers has been rescinded, however, each representative of each site casts votes equal to half of the workforce of that site. Since at DaimlerChrysler the CWC is expected to retain the tradition of white-collar and blue-collar delegates from each site, this means that the relative voting power of nominally white-collar representatives is significantly skewed upwards.

### **Terms of office in the local and Central Works Council**

Figure 6 illustrates the accumulated terms of office of the CWC members in both their local works councils and the Central Works Council.

**Figure 6: Terms of office of CWC members at the local and central level**



Notes:

Works council terms of office/election periods were changed in 1972 from a 2-year term to a 3-year term, and in 1987 from a 3-year term to the current 4-year term.

8 CWC members were elected to local office in mid-term elections.

### Generational Shift in the CWC

At the outset of this study in 1999, a generational shift in the Central Works Council had recently taken place. As can be seen in Figure 6, about one quarter of the CWC had only been a member for less than four years, and half had only been members of the CWC for eight years. The longest-serving member has served since 1971; he called himself the “memory” of the CWC. As can be seen in Figure 6, the length of their experience at the local level is fairly evenly spread out over the past 20 years, which means that they bring to their work a wide range of experience at the local level. Most had been members of local sub-committees, or had held other local works council offices before being elected Chair or Deputy Chair. In this sub-committee work they will have gained specialist knowledge in a number of fields.

What is striking about the composition of the CWC at DaimlerChrysler is that its members are relatively young compared to other central works councils in the automobile industry. About half the members are in their early to mid-forties. According to the national union officer who advises the DaimlerChrysler Central Works Council, there was no series of “coups” which led to this, it just happened that the leadership of the local works councils went through generational shifts at much the same time.

## **Works Council Career Ladders**

Most of the CWC members have worked for DaimlerChrysler, or companies which became DaimlerChrysler, since the beginning of their working lives. One CWC member pointed out that he was on his seventh employee ID card. Many of the CWC members have had what can be called a classic works council career: after having served as youth and apprentice representatives during their vocational training with the company, they went on to be elected to the local works council, and have successfully stood for re-election ever since. Others, in particular the white-collar representatives worked for many years for the company before being elected to the works council. It is impressive that nearly all members can say without hesitation when they were first elected to the local works council, even if it was many years ago.

## **Training**

Nearly all the CWC members have had extensive training in employee representation provided by the IG Metall. Such training often begins with youth and apprentice representation. Then there is a series of training courses on general works council work, which includes labour law and basic economics, for example. This basic training is complemented by a range of specialist courses on pay schemes, ergonomics, history of the labour movement, job classifications, presentation skills, or vocational training, to name just a few examples.

## **Trade Union Activities**

All are members of the IG Metall union. At least one of the white-collar representatives used to be a member of the former white-collar union DAG until he transferred to the IG Metall. Most if not all were also members of the local shop stewards committees (*Vertrauenskörper*).

Nearly all the CWC members hold offices within the local branches of the IG Metall; many are also members of its regional or national-level lay committees. This is not surprising, since most DaimlerChrysler plants are the largest employers within the local IG Metall branch office; their workforces are always represented in the local collective bargaining committee and in the local executive committees of the IG Metall. Aside from these functions, a number of CWC members are also active in specialist committees at the local level, for example in the local white-collar committees, local vocational training commissions, or in local tripartite commissions. Several CWC

members are also active as lay members of the local labour courts<sup>16</sup>. About half the CWC members are also active in political parties; several even hold local office. However, many CWC members pointed out that next to the demands of other duties in the local works council, Central Works Council, Group Works Council, or European Works Council, it is their time-consuming and travel-intensive involvement in the CWC in particular which has prompted them to curtail their voluntary activities at the local level.

## **5.2. The CWC's constituents: the members of the local works councils**

The sub-units within this federal system of interest representation are the local works councils. It is useful to examine who these constituents of the CWC are. Issues such as age, gender, the length of their experience at the company and in the local works council can be expected to shape their perceptions of their role as works council members in general and of the work of the CWC in particular. Trade union and other forms of political activism can also be expected to have an influence. Their knowledge about other sites can be expected to shape their insight into the cross-site implications of the work of the CWC. Their assessment of the work of the CWC is based on their access to information about the work of the CWC or the situation at other sites.

The first section broadly outlines the demographics of the local works council members. The second section addresses how long they have worked for the company, how long they have been works council members, and how much time they spend on works council activity. The third section explores the various influences on their own individual opinion-forming processes, highlighting the role played by cross-site contacts and their opportunities to become directly involved in the work of the CWC.

The data presented here is drawn from the postal survey of the works council members from the plants only. The members of the central works council, i.e., the chair and deputy chair of each local works council, were excluded from the sample, however, since the survey sought to investigate the CWC from the point of view of non-members. Because the works council structures which cover the 41 Sales and Service establishments are so complex, and their concerns quite different from those of the factories, it was beyond the scope of this study to cover these. The factory works

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<sup>16</sup> The system of *Arbeitsgerichte*, or labour courts is roughly analogous to the UK employment tribunals. Next to the official judge, representatives of employers and of employees/trade unions serve as lay judges (*ehrenamtliche Arbeitsrichter*). They have full voting rights – and indeed, the lay judges can theoretically outvote the official judge.



councils cover nearly 133,000 employees, or 88% of the total workforce of DaimlerChrysler in Germany.

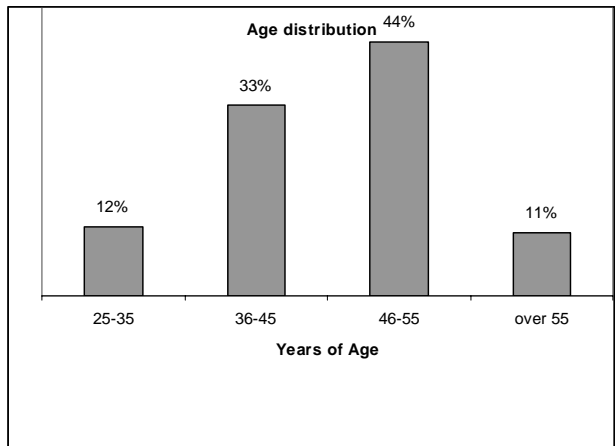
**Age, Group Affiliation, and Gender**

Figure 7 illustrates the age distribution of the works council members across all DaimlerChrysler factories in Germany. Roughly three quarters are between 36 and 55 years old, 12% are under 36 years of age, and 11% are over 55. There are no works councilors younger than 25. The distribution of age cohorts in each individual works council does not differ significantly from the overall age distribution illustrated in Figure 7.

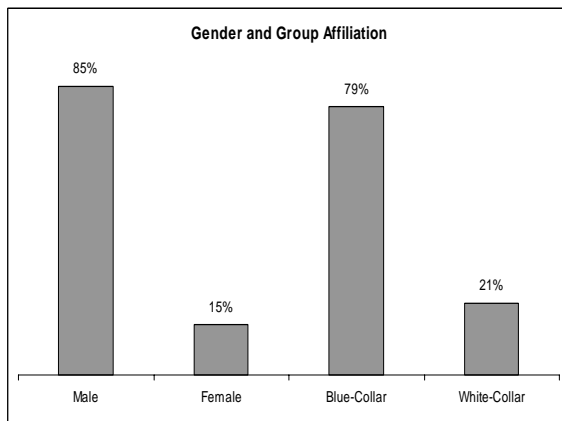
The works councils’ composition corresponds to the classic stereotype of the automobile industry workforce: they are mostly made up of male blue collar workers. 85% of all works council members are male, and 79% are blue collar representatives. The amendment of the *BetrVG* in 2001 subsequently did away with this formal distinction between blue collar and white collar constituencies.

**Figure 7: Age, gender and group affiliation of local works council members**

**Age Distribution**



## Gender and Group Affiliation

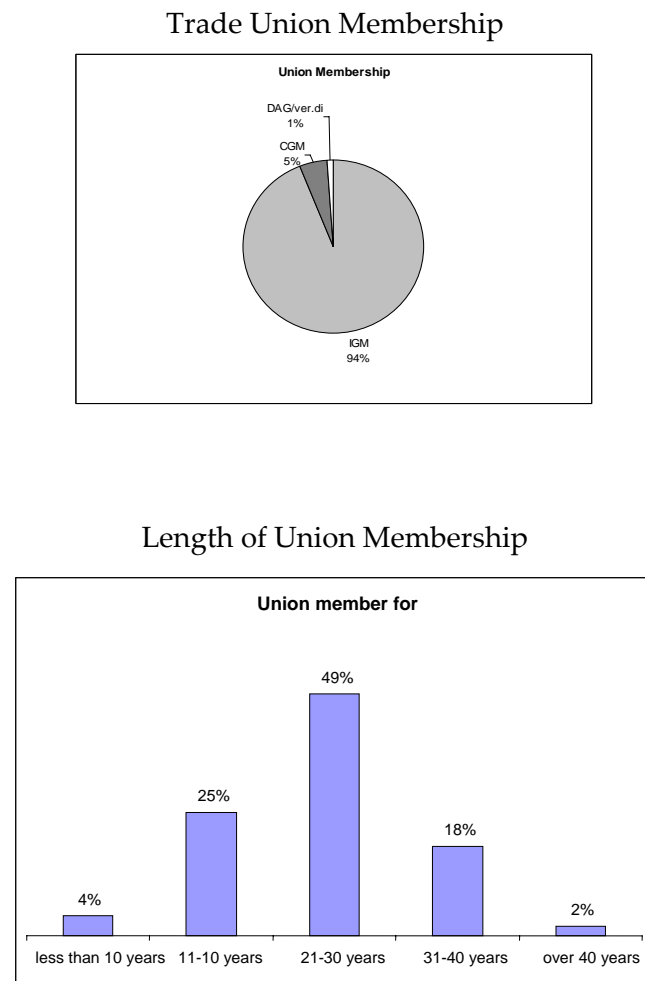


## The Works Councils and Trade Unions

All respondents were members of a trade union: 94% were members of the IG Metall, 5% were members of the Christian Metalworkers' Union (CGM), and 1% belong to the white-collar union DAG, which has since merged with other unions to become a conglomerate services union. The CGM is only represented in four sites, not across the whole company. The DAG is only represented in two local works councils.

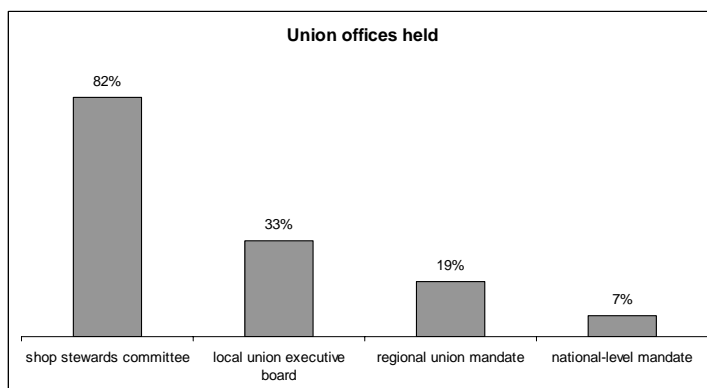
The length of trade union membership runs roughly parallel to the length of employment illustrated in Figure 13, below: over two thirds of all respondents have been union members for over 20 years, a further quarter of all respondents have been members for 11-20 years, and the remaining 4% (as a rule the younger works councillors) have been union members of the union for less than 11 years.

**Figure 8: Trade union membership among local works council members**



The respondents are also active union members. 82% were or had been shop stewards (*Vertrauensleute*). One third also held a local union office (for example as a member of the local delegates' assembly). Just under one fifth held elected office at the regional level (for example as a member of the collective bargaining commission) and 7% also held elected office at the national level. This high degree of lay union involvement bears testimony to the importance of the close interrelationship between works councils and trade unions.

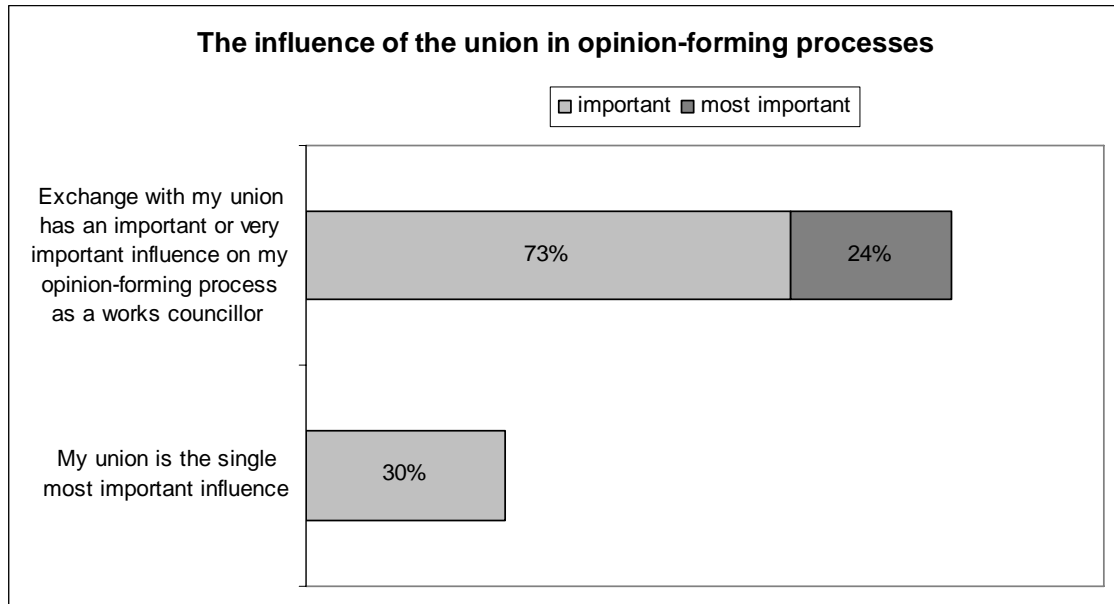
**Figure 9: Union offices held by local works council members**



This interrelationship was also clearly reflected in the responses to the questions about the influence of the trade union on their work as works council members. A total of 97% of respondents indicated that the exchange with the trade union played an important role in their opinion-forming processes. Nearly three quarters of all respondents (73%) assessed the input from their union to be very important in shaping their work on the works council.

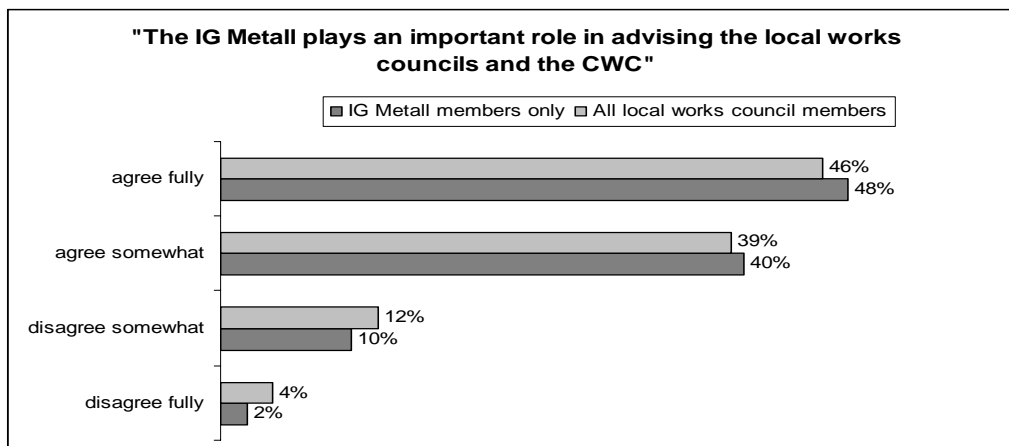
When the respondents were asked to indicate which organization or group of persons had the greatest influence in determining their own political position, only 30% named the trade union (see Figure 10). From this it can be concluded that while the trade union may play a highly influential role in helping to shape the overall principles that guide the work of the works council members, the union ranks behind local actors such as the workforce or fellow works council members in shaping the opinion of individual works councillors.

**Figure 10: The influence of the union in opinion-forming processes**



As could be expected within the German system of industrial unions, the overwhelming majority (94%) of works council members are members of the IG Metall. Since individual officers of the IG Metall advise the local and central works councils, works councillors were also asked to assess whether they see the IG Metall as playing an important role in supporting and advising these bodies. The responses by IG Metall members and others did not differ significantly: 88% of the former and 85% of the latter indicated that that IG Metall plays an important role in advising the works councils. While the thirteen respondents who are not IG Metall members tended to assign the IG Metall a slightly less important role, these results indicate that the IG Metall has a high profile in the work of the local works councils (See Figure 11).

**Figure 11: The advisory role of the IG Metall**

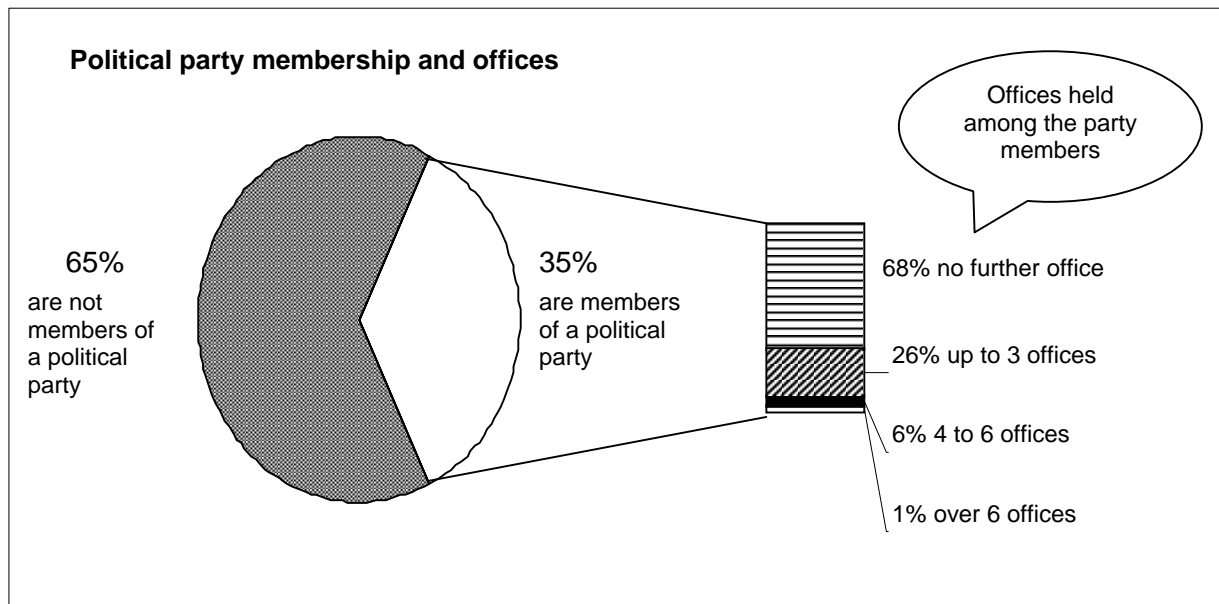


Nearly all respondents (99%) have been formally trained in works council work. An equally high proportion (98%) has participated in strikes in the past.

### **Party membership and activity**

The works councillors were also asked whether they are members of a political party (without being asked to specify any particular party). The goal of this question was to ascertain whether other political activities might be brought to bear on their work as employee representatives. Just over one third of all works council members was a member of a political party; of these, about one third either currently held a party office or had held office in the past. All age groups were equally represented in this sub- sample, which indicates that party membership has not gone “out of style”. There was also no statistical relationship between party membership and the length of office as works councillor; in this sense, party activism does not seem to be politicising. Interestingly, the rate of party membership does vary by site, however: in some sites the proportion of works council members who were members of a political party was significantly higher than in others.

**Figure 12: Political party membership and offices**

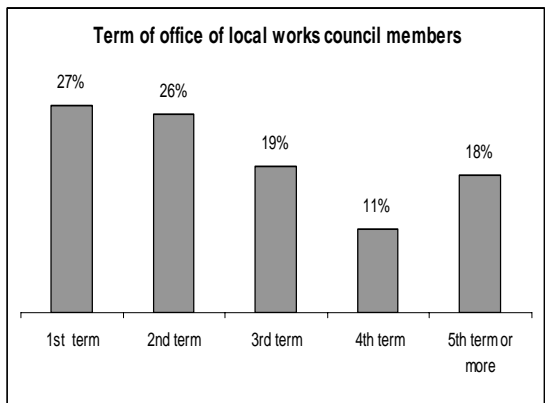
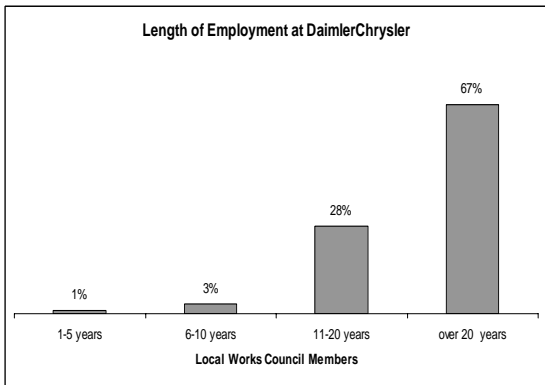


### Long experience at DaimlerChrysler

The individual works council members can draw upon many years' experience in the company: 95% of all works councillors have worked for over 10 years at what is today DaimlerChrysler. Over two thirds of all works councillors have even worked for the company for over 20 years. Only 10 respondents have worked for DaimlerChrysler for less than 10 years.

There is a solid balance between experience within the company on the one hand and experience on the works council on the other. Interestingly, when the survey was conducted in 2001, just over half (52%) of the works councillors were only in their first or second term. The often heard criticism that works council members have too little direct experience on the shop floor or in administration is not borne out. Since nearly one third (29%) of the respondents have been works councillors for over 12 years, the works councils can also draw on extensive experience in employee representation. Implicit and explicit knowledge about processes and strategic approaches as well as the history of employee representation in the company is thus not lost. The distribution illustrated in Figure 13 is indicative of all sites with two exceptions: in 2001 about half of the works council in Berlin were in their first term, while in Bremen 46% of the works councillors had been members for over 24 years.

**Figure 13: Length of experience at DaimlerChrysler and in the local works council**

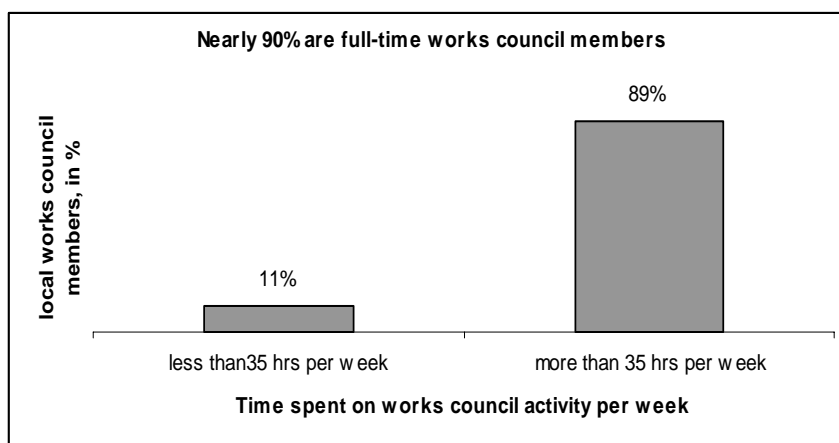


**Works Council Activity**

Nearly 90% of respondents serve full-time as works council members. The *BetrVG* provides for works council members to be released from their normal duties in order to fulfil their duties as employee representatives. The number of full time works councillors rises with the size of the works council. The remaining works council members are released from duty on a case by case basis. In larger companies, however, it is common practice that far more works council members are *de facto* released from duties on a full time basis than would be required by law. In order to present a more accurate picture, the questionnaire did not explicitly ask whether respondents were full time works councillors; instead, respondents were asked to indicate how many hours per week they spend on works council activities.



**Figure 14: Hours spent on works council activity per week**



Nearly 90% of the local works council members surveyed are full-time works council members. In absolute figures, then, 193 respondents work full time as employee representatives; if we extrapolate the survey results to the population of all the works councils at the plants, 290 men and women in the plants spend their entire working day tending to the needs of the 133,000-strong workforce. The proportion of full time works councillors in the Sales and Service establishments is most likely significantly lower, since the individual works council have on average only seven members, and the workforces are much smaller at each establishment.

### **Opinion forming in the works council**

The works councils were asked with whom and how intensively they exchange opinions and information in the process of formulating their own individual position. Figure 15 illustrates their responses graphically. Within larger plants in particular, there is an implicit system of departmental works council representation: wherever possible, candidates for the works council are drawn from each department or shift in order to achieve a representative composition of the works council. It emerges that the works councillors identify to a very high degree with their individual constituencies: without exception, all respondents indicated that exchanges with close work colleagues play an important role in their own opinion-forming processes; 89% said that that such exchanges play a very important role.

Since most works council members are *de facto* full-time works councillors, they don't actually have any "close work colleagues" aside from their colleagues on the works council. The fact that nearly all respondents nonetheless cited the departments which

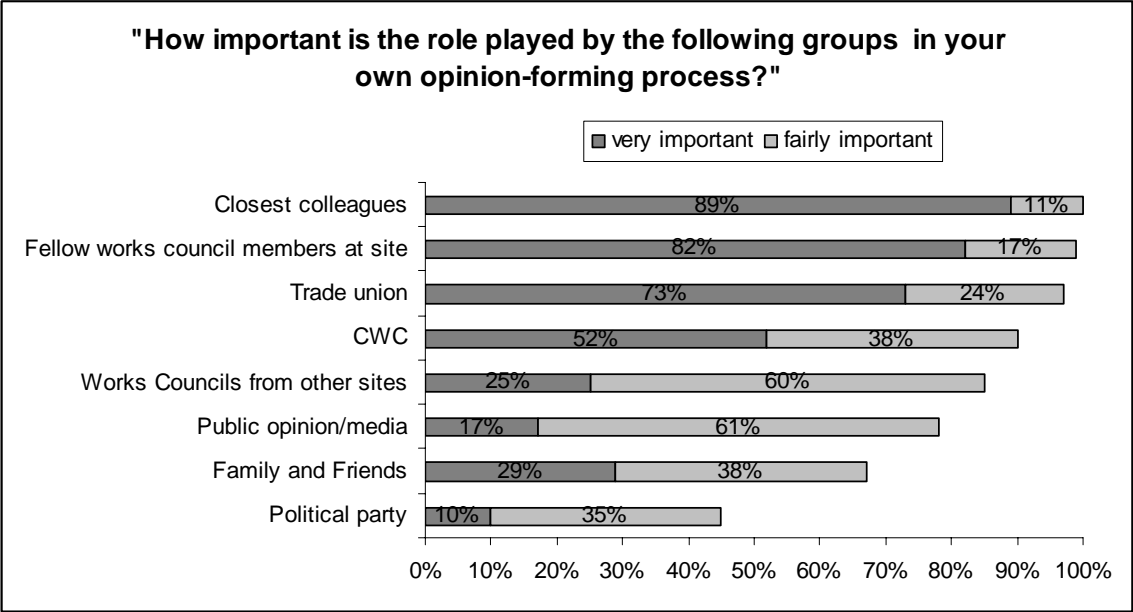
delegated them testifies to their strong feeling that these departments and shifts represent their local constituency; they are responsible for representing their views within the works council. The assessment of exchanges within the works council itself as well as with the trade union as “very important” ranked closely behind, with 82% and 73% respectively.

Interestingly, many works councillors draw upon contacts to works councillors in other sites: 90% indicated that the position of the CWC was an important part of their opinion-forming process, and 85% have contact with other works councillors across the company.

Such contacts almost certainly play a role in ensuring a productive exchange of opinion and experience beyond formal participative structures. Works councillors also draw upon several sources external to the company, such as the media, family and friends and political parties.

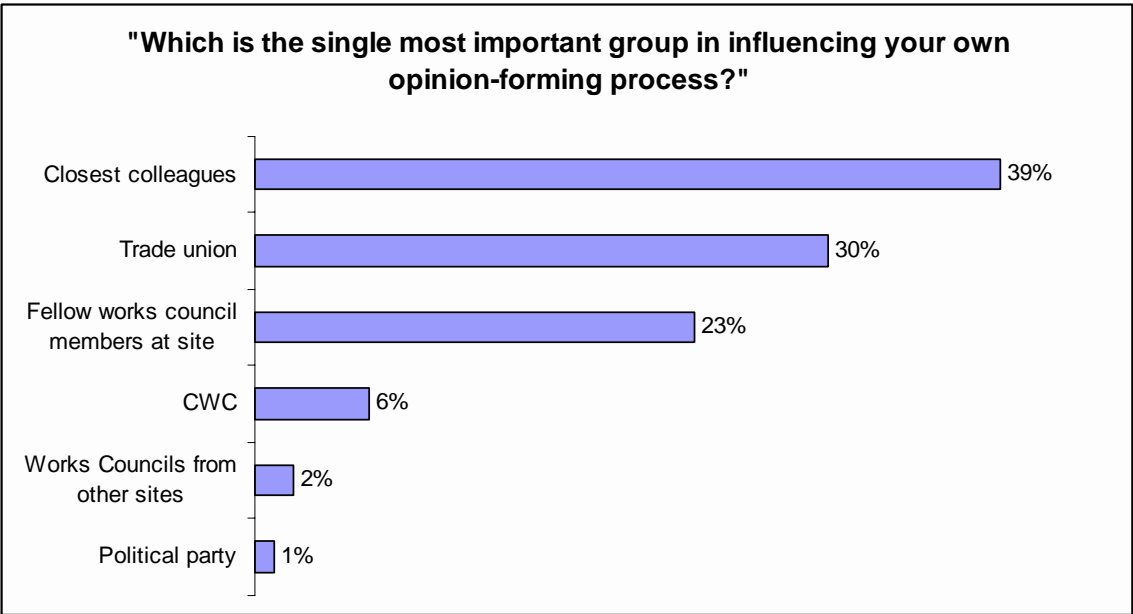
Respondents were also given the opportunity to indicate other organisations or groups of persons which influence their opinion-forming process. Six respondents supplemented the category “trade union” by citing the local shop stewards specifically. Six works councillors mentioned their direct exchanges with the employer, in particular with the personnel department and with local top management. Six further respondents discuss issues with works council members and trade unionist from other companies. Politicians, the church, and the handicapped employees’ representatives were mentioned by two respondents each. The following organisations or groups were mentioned by one respondent each: the German union confederation DGB, youth and apprentice representatives, the local migrant workers’ representative, the “Alternative Metalworkers’” organisation, academics, local societies and associations, social services, and local community organisations.

**Figure 15: External influences on works councillors’ opinion-forming processes**



In a further question, respondents were asked to indicate which single organisation or group had the greatest influence on their own opinion-forming process (see Figure 16). These responses allow a more differentiated understanding of the wide-ranging sources of influence related above. Here again, three key groups stand out: “Colleagues”, “Trade Union”, and “Fellow Works Councillors”.

**Figure 16: Single most important influence on opinion-forming processes**



### **Influence of the CWC and cross-site contacts**

For some respondents, albeit a minority, however, the most important discussions take place beyond the plant; as many as 6% of respondents consider that the CWC and 2% consider that works councillors from other sites play the most important role in their own opinion-forming process. Since none of these respondents are themselves members of the CWC, this highlights the important role that participation in commissions plays in making the work of the CWC accessible to local works council members and in providing the opportunity to meet and exchange opinion with local works council members from other sites. Citing the source “CWC” as the most important source also indicates that the local works council members appreciate the cross-site implications of many issues.

90% of respondents indicated that the work of the Central Works Council plays an important role in forming their opinion about local issues. For 52% the CWC even plays a “very important” role. Similarly, for 85% of respondents, exchanges of opinion and experience with works council members from other sites play an important role in shaping their own position. These results underscore the value accorded to cross-site contacts and sources of information and ideas within the closely interwoven network of interdependent sites at DaimlerChrysler.

Since none of the respondents are themselves members of the CWC, their only access to the CWC is via the reports from their CWC members and through their own involvement in the work of the commissions. It is chiefly through the work of the CWC that the local works council members have contact to the works council members in other sites.

### **Sources of information about sites and the CWC**

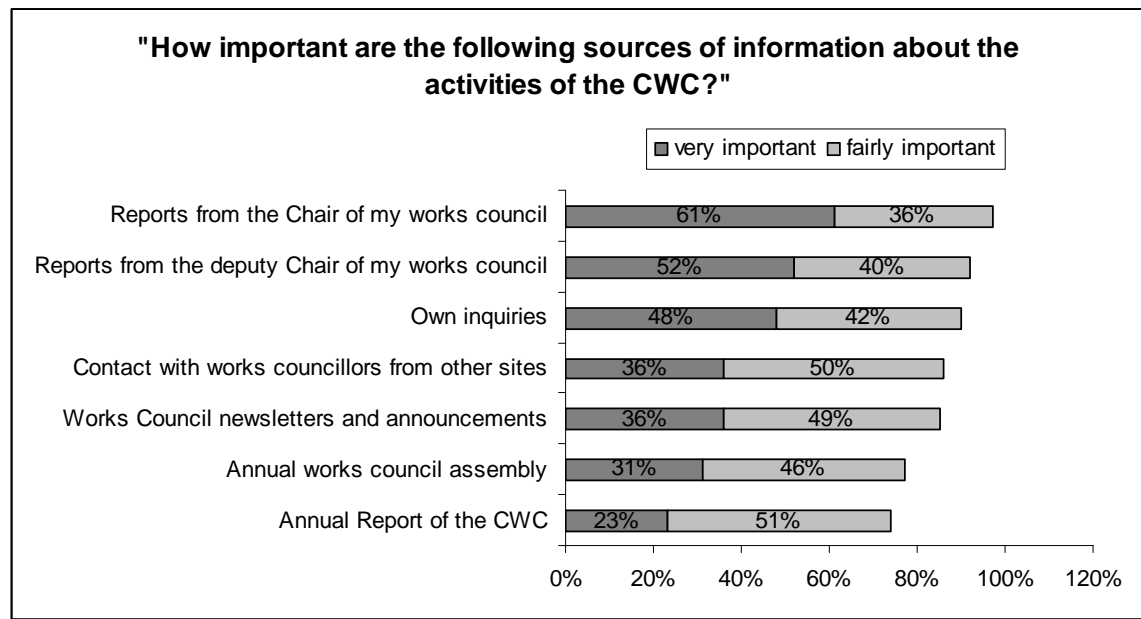
If the CWC plays such an important role in the individual works councillors’ opinion-forming process, it is useful to examine how they are informed about the position or activities of the CWC.

For nearly all respondents, reports about the work of the CWC from their Chair (97%) or their Deputy Chair (92%) was an important source of information. 90% of the respondents supplemented these reports through their own direct inquiries; 86% of

respondents also drew upon their contacts with works councillors from other sites in order to get information.

As required by Section 53 of the *BetrVG*, the CWC holds an annual works councils conference in which it reports directly to all the executive committees of all the local works councils. For 77% of respondents, this was an important source of information about the work of the CWC. The annual report which is compiled for this conference was also an important source of information; however, only 23% of respondents considered this to be a “very important” source of information. In the light of the widespread involvement of local works council members and the fact that they regularly receive reports from the works council Chair, the significance of an annual conference and of the written report pales in comparison.

**Figure 17: Sources of information about the work of the CWC**



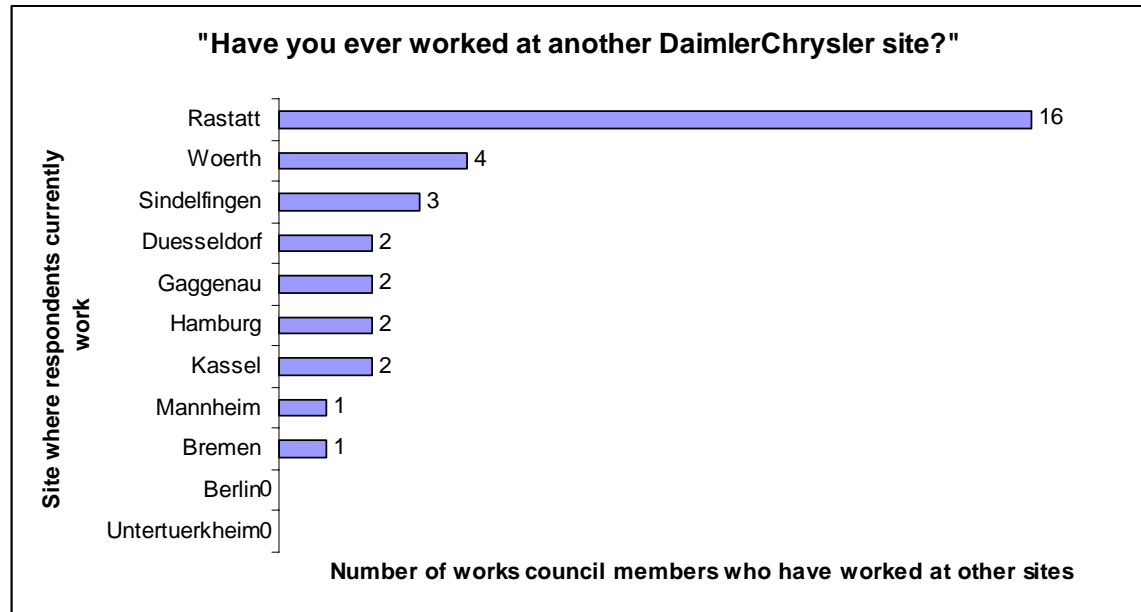
**Personal contacts and direct personal experience**

If 85% of local works council members regularly contact works councillors at other sites, then presumably they do so on the basis of their own personal networks. For a few works council members, these contacts may have been carried over from when they themselves worked at another plant: this only applies to a small minority of works council members, however. The annual assembly of the works councillors may also

serve to spark such personal cross-site networks. But the single most important basis for such personal networks lies in the wide scale involvement of local works council member in the work of the CWC.

On the assumption that direct personal experience in another site could shape local works councillors' perception of the relevance of cross-site issues, respondents were asked to indicate whether they had ever themselves worked at another site. A total of 33 works council members had experience from other DaimlerChrysler sites. Since the newest plant in Rastatt had actively recruited employees (and works council members) from nearby DaimlerChrysler sites, it is not surprising that 16 members (fully 86%) of the Rastatt works council brought with them experience from other sites. But in every other works council except those in Berlin and Untertürkheim there were works council members who were able to bring their own experience at other sites to bear on the work of the local works council. (See Fig 18.)

**Figure 18: Number of works council members who have worked at another site**

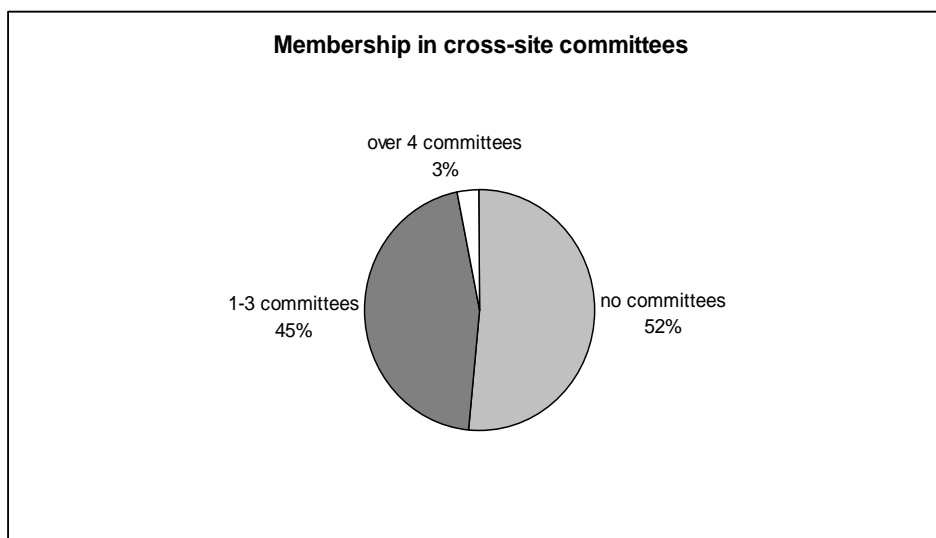


### Active involvement in the work of the CWC sub-committees

Just under half of all respondents (48%) were or had been members of commissions, project groups, working groups or task forces of the CWC; 3% were or had been active in as many as 4 such subcommittees.

Anecdotal evidence suggests that this level of involvement of local works council members in the work of a Central Works Council is largely unprecedented in the German system of multi-tiered interest representation. The implications of this large-scale involvement of local works council members in the work of the commissions is further examined in Sections 5.3 and 5.6.

**Figure 19: Membership in cross-site committees**

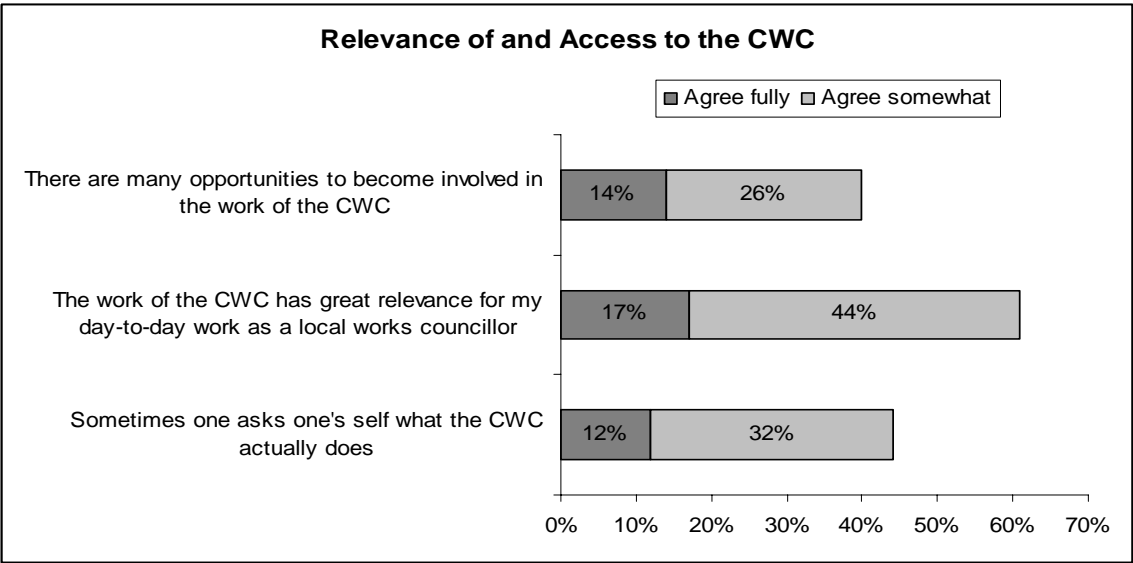


### Meaning of and access to CWC work

According to 61% of the respondents, the work of the CWC has high relevance to their day-to-day work in the local works councils. This can be considered further evidence for an acute awareness of the close political and issue-based interlinkage between the local and central levels. According to 60% of respondents, however, there are not many

possibilities to become involved in the work of the CWC. This is somewhat surprising, since just under half of the works councils are involved. Overall, 44% of the respondents were of the opinion that it was not always clear to local works members member what exactly the CWC does. This suggests that despite the existing reporting structures and the inclusion of the local works council members, the content and the utility of the work of the CWC is not always transported back to the individual works council members.

**Figure 20: Relevance of and access to the work of the CWC**



**Conclusion: no site is an island**

Taken as a group, the works councils are on the whole fairly homogenous. A cross-tabulation analysis of the data presented above revealed that there are only negligible differences if any between the various sites. This is true both for the demographic characteristics of the population as well as regarding their own decision-making processes and their assessment of the relevance of and access to the CWC. Where important site-specific features were evident, these were presented above.

It is possible that the strong role and relevance accorded to the CWC might have been influenced by the fact that the core of the postal survey explicitly focussed on the CWC. However, as will be seen in Section 5.6, there is a widely-held perception that there is a very important cross-site dimension to their work as works councillors. This



perception is consistent with the important role accorded the CWC by the local works council members surveyed.

### **5.3. The role of the CWC commissions, project groups, working groups, etc.**

The work of the CWC is supported by an extensive network of thirty-nine sub-committees, commissions, project groups, and working groups which are elaborated upon below. This is the real operative level of CWC work; indeed, it is here that the nuts and bolts of CWC strategies are assembled.

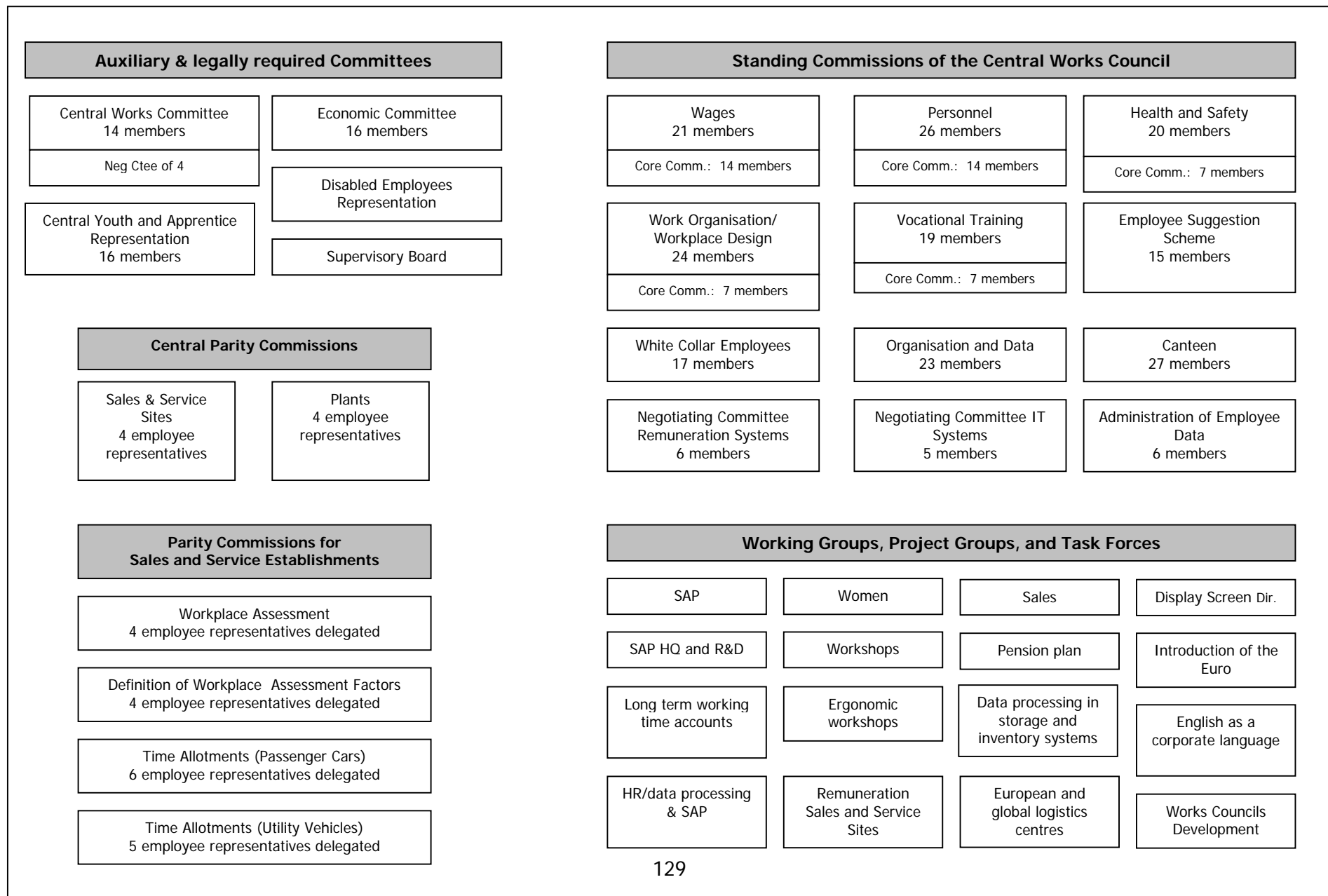
The Works Constitution Act requires the establishment of two committees: a Central Works Committee, and a (Central) Economic Committee. The law also provides for the establishment of further sub-committees. As can be seen in Figure 21, the CWC has made ample use of these provisions, setting up a vast network of nearly forty commissions, working groups, negotiating committees, task forces, and project groups.

Next to providing working structures to prepare the work of the CWC, this elaborate substructure serves to anchor the work of the CWC into the network of nearly 60 local works councils across the company. In 1996, the CWC secretariat counted some 145 people besides the CWC members themselves who were involved in the work of the CWC. These 145 people are members of the local works councils; some are members of up to nine different subcommittees. Through a range of cross-memberships and links between subcommittees, this network goes beyond top-down and bottom-up channels of communication between the CWC on the one hand and the local works councils on the other.

As a rule, each plant is represented in each commission. Sometimes the representative is that plant's Chairperson and thus its CWC member, sometimes it is the head of a local subcommittee. This mixture of political authority and issue-based competence is seen to be an important guarantee for the commissions' work. This inclusion of non-CWC members is seen to play a positive role, since they bring issue-based competence to bear on the commission's deliberations. At the same time, the inclusion of non-CWC members means that often a plant's Chairperson is not personally involved in the commission's work. Here too, issues of control and trust arise. This underscores the importance of reporting back, of closing the loop between the work of the commission, the local works council and the CWC.

One drawback to this elaborate array of specialised committees is that if an overarching issue arises there is a significant need for coordination. There is also the challenge of communicating the work of the sub-committees upwards to the CWC and downwards to the local works councils.

**Figure 21: Committees, Commissions, Project Groups, & Task Forces of the CWC at DaimlerChrysler (1999)**



There is to some extent an implicit hierarchy within the plethora of different commissions, project groups, working groups and task forces. The commissions are seen to have a clear, formal competence to make or prepare decisions. The working groups serve primarily as forums for information and the exchange of ideas. Yet some so-called working groups, such as the working group on sales structures, have conducted negotiations with management. The project groups, by contrast, effectively act as commissions when they take up negotiations with management, for example. It became clear that among the CWC members there is some confusion about the precise names and function (and formal mandate) of each particular type of subcommittee. Despite all attempts by the CWC members to sort the substructure into a coherent whole, it emerges that there is actually no underlying structure or rule; instead, these substructures must be viewed as a complex network full of ambiguities and inconsistencies which have taken root over time.

## **The infrastructure of the CWC**

### *Legally required committees*

The *BetrVG* requires that the CWC set up a Central Works (Executive) Committee, which is discussed further below, as well as a (Central) Economic Committee. The law also provides for an institutional connection between the CWC and other auxiliary peak representation bodies, such as the Central Youth and Apprentice Representation and the Central Disabled Employees Representation: the Chairpersons of these two auxiliary committees are entitled by law to attend meetings of the CWC. In practice, and as is common practice in all central works councils, the CWC also operates in close cooperation with the employee delegation on the Supervisory Board; three of the employee-representatives on the Supervisory Board are members of the CWC. A fourth member of the Supervisory Board attends the CWC meetings as a guest, and the full-time official of the IGM who advises the CWC is also a member of the Supervisory Board. There are thus personal links between all the peak-level employee representation bodies.

### *Parity Commissions*

At the top level of the company, six parity commissions have been set up: as the name indicates, these commissions are made up of equal delegations of employer and employee representatives. The employee delegation to these commissions usually includes at least one member of the CWC; other members are delegated from the local

works councils. These structures mirror the parity commissions which are set up at the local level; their overall task is to define standards or resolve conflicts where necessary at the peak cross-site level.

There is a central parity commission which covers all the plants. The structures covering the wide and differentiated network of Sales and Service sites is more complicated, however: next to a top-level Sales and Service parity commission, there is a set of four separate parity commissions charged with defining the criteria for workplace assessment and time allotments. These criteria or factors form the basis of job descriptions and customer billing; the fact that there are four separate parity commissions set up to deal with these issues on behalf of the 41 Sales and Service sites demonstrates the need for central coordination of these issues. It is clear that decentralisation and the resulting variation need to be kept in check; there are apparently limits to the degree of differentiation which is sustainable.

The various Sales and Service establishments are all quite different: they range from older, often rather impractically built sites, to newer ergonomic and optimally laid-out sites. Put simply, this means that a task which is carried out at an older, less optimally designed site can take significantly more time or effort to complete than it would at one of the more modern sites, which were built with precisely these tasks in mind. Any given repair job, for example, is broken down into various tasks; each of these discrete tasks is assigned a fixed value. Depending on the assessment of each workplace, these values vary from site to site. The time allotted to complete each task also varies. The whole repair job is thus calculated as a composite of the values of each separate task. This calculation is not only the basis for the company's billing system; it is also the basis for the calculation of piecework remuneration. These workplace factors and time allotments therefore have a direct impact on an employee's earnings. Depending on the layout of the repair workshop, it might not be possible for an employee to complete a repair job as quickly or as efficiently as an employee at another plant. Effectively then, an employee can earn more at one site than at another simply due to the fact that the workshop has a more modern and efficient design which enables him to complete more tasks in less time than his counterpart at another site.

It is this variation across sites which must be evened out at the central level: the workplace assessments and time allotments must be agreed both among employee representatives from various sites as well as between employee representatives and the employer. The parity commission on workplace assessment deals with the precise definition of the criteria which form the basis for the assessment of each workplace. Similarly, the parity commission on time allotments deals with the price definition of the criteria which form the basis of piecework rates. Put simply, the employer has an

interest in a standardised system of workplace assessment, so that job descriptions and billing systems are comparable according to a certain standard, while the employee representatives have an interest in a system which ensures an equitable and generous assessment while adequately taking into account the high degree of variation among sites.

In summary, the parity commissions at the CWC level in effect serve to coordinate the work of the parity commissions which are set up at the local level: where necessary, they are also responsible for defining common standards and resolving conflicts. The employee-side delegation is made up of at least one member of the CWC plus further members drawn from local works councils and local parity commissions. It is, in effect a system within a system: a multilevel structure to coordinate workplace assessment as part of the larger multi-level system of works councils and central works councils.

#### *Permanent Commissions of the Central Works Council:*

In 1999 the CWC at DaimlerChrysler had 15 permanent commissions. The remit of these commissions range from the wage commission to the canteen commission (See Figure 21.) Their size varies between 14 and 25 members. In some commissions, sites are represented by both its CWC member and a further local works council member.

Like the parity commissions, the permanent commissions are in effect a multi-level system embedded within the multi-level system of the CWC. These CWC commissions effectively function as an extension of the sub-committees set up at local level for each specific issue area. Each commission is chaired by a member of the CWC, and as a rule, every site delegates at least the chairs of the respective subcommittees at local level.

The composition of the committees is meant to ensure the inclusion of both issue-based competence and site-specific views. The purpose of the commissions is to work through issues, to function as a sort of back room – to prepare, but not to take decisions. However, it is clear to all that in preparing decisions, in the process of weighing alternatives, the commissions are in effect already structuring decisions. This is why it is seen as so necessary that all the sites be represented, to have one's hand in, so to speak.

Several key commissions, such as the Wages Commission or the Workplace Safety Commission, have also set up so-called "core commissions" from among their members. (See Figure 21) These core commissions are explicitly mandated to negotiate

on behalf of that commission and the larger CWC. They also do much of the groundwork for the commission. The core commissions are explicitly representative: each site delegates one member. Furthermore, where the core commissions are nominated out of commissions that deal only with the plants, such as the Plants Wage Commission, then there is always one representative of the corresponding Sales and Service commission, in order to ensure the articulation between the strategies and policies pursued in both divisions.

The names of the commissions illustrate the wide range of the issues dealt with by the commissions. There are the classic catch-all commissions, dealing with such issues as personnel policy and wages. In some cases, such as for wages or workplace organisation, there are separate commissions for the plants and the Sales and Service sites. Another group of commissions deals with issues specific to certain groups of employees, such as white-collar employees, or apprentices. Other commissions deal with specific issues, such as workplace safety, employee data protection, workplace organisation and design, or the administration of the bonus-based employee suggestion scheme. Then there are formal negotiation commissions, which conduct negotiations with the central management on such issues as remuneration systems, or the introduction and application of information technology.

#### *Project Groups, Working Groups, and Task Forces*

Next to the standing commissions, a wide range of project groups and task forces have been set up. Some deal with ongoing issues, such as equal opportunities for men and women, or the development of ergonomic workplaces. Others have been set up as *ad hoc* groups to monitor changes across the company, such as the implementation of the EU Display Screen Directive, the introduction of the Euro, or the introduction of English as a corporate language in the course of integrating Chrysler. Other task forces monitor more long-term issues, such as the employee pension plan, the application of the personnel software package SAP, or data processing in storage and inventory systems, in particular with respect to employee data protection. Still others track potentially difficult issues such as the administration of long-term working time accounts. Another project group was set up to monitor the introduction of European and global logistics centres.

The Project Groups are normally assigned a task for a fixed term; some run for only 6 months, others are set up for up to five years. At the end of this time, they are expected to deliver a final report and disband. Sometimes a project group grows out of the whole CWC, such as the project group which monitored the introduction of the

Euro. Other projects arise out of the work of a single commission, such as the task force on long-term working time accounts.

Recent years have seen an increase in the range of topics that did not fit into the classic commission categories, but to which the CWC saw the need to develop a coordinated response. In response, a range of new project groups were set up. Pointing to the extreme example of a one-man project on employee car-leasing programmes, one CWC member argued that it demonstrated the fact that – even if only one person deals with the issue – some issues simply must be dealt with at the CWC level for reasons of fairness and efficiency (23/3).

The proliferation of project groups is seen by some with scepticism: *“Of course we need smaller groups who prepare the work of the CWC. But I have a problem with some project groups that start to develop a life of their own”* (10/5). Furthermore, as another CWC member pointed out, while the iteration and delegation between the CWC and the formal commissions is quite transparent, the delegation and reflux of some of the project groups is less clear-cut: *“Sometimes they report back to the Chairman of the CWC, sometimes they report to a commission, or several commissions, or wherever, sometimes we lose sight of who is actually discussing what with what aim”* (9/4)

It was not always this way; it is only since the mid-1990s that the work of the commissions and project groups, etc., has become so extensive (29/2). Until the early 1970s, the work of the CWC was quite underdeveloped compared to today. Herbert Lucy, Chairman of the CWC from 1973 to 1989, pushed management into furnishing the CWC with a secretariat, with their own offices, and secretarial and professional support. It was he who set up the basic structure of commissions that had been *ad hoc* at best until then. According to one respondent, this was one key reason why he was re-elected even though he represented a relatively small plant: he had new ideas about how to organise the work of the CWC (3/2-3). As one long-serving CWC member commented, *“Commission work today is nothing like what it used to be. Way back when, when I joined the CWC, Herbert Lucy had just set up a CWC secretariat with one secretary. Herbert Lucy developed all this, saying that if I want to do good CWC work then I need experts, I need solid preparatory work, for the commission work I need people from the plants, not just the CWC members”* (28/3).

Before the mid-1990s, the issues were highly compartmentalised within the CWC. The secretariat provided administrative and professional support. Most importantly, the commissions were not just institutions of the CWC, they were also used to work through issues that local works councils were faced with at the local level. In effect they provided services to the local works councils. The local works council called upon the

expertise of the CWC commissions, the commissions called in outside experts to act as consultants on behalf of the local works councils, management representatives were asked to present their views, and the commissions even organised training sessions on specific issues for the local works council members. Through the work of the commissions, current topics could be much more thoroughly addressed and positions developed more solidly than would ever have been possible at each local level. As one respondent pointed out, the local works councils have always benefited from the work of the CWC and its commissions (3/5).

The commissions were also not always small, effective groups. Representativeness was, as ever, a key consideration; not only did each site have to be represented, but larger sites were entitled to more seats. In the past, the larger plants were often represented by two people, while smaller plants sent one representative. It was not until the middle of the 1990's that the commissions became smaller and more issue-specific. Rather than applying a rough system of proportional representation by plants, a few CWC members were asked to take on responsibility within a commission and then local works councils were invited to delegate members (3/3).

#### **5.4. Constitutional politics in the Central Works Council**

Føllesdal (2003) highlights some of the philosophical issues which have arisen from empirical findings regarding federalism. Chief among these is the issue of stability: Føllesdal (2003) suggests that “(con)federal political arrangements are inherently unstable; rather, they tend toward disintegration or towards centralisation. Such instability should come as no surprise given the tensions typically giving rise to federations in the first place.”

In response to this inherent instability, Føllesdal (2003) points out that “constitutional politics” are a marked feature of federations, as political actors strive to renew or reset the balance between the allocation of autonomy and decision-making authority, the appropriate forms and topics of cooperation, and the overall need to prevent fragmentation.

The seminar held by the CWC in Summer 1999 provides a prime example of such constitutional politics. Once per year, the CWC meets for a weeklong meeting under the auspices of the IG Metall union to review its political planning for the coming year. The change in CWC leadership a half year before the 1999 seminar also prompted the CWC to review its own working structures. As will be seen, these at times controversial discussions revolved around key “constitutional issues”, such as the allocation of offices and decision-making authority.



This seminar was conceptually planned in advance by the secretariat in close cooperation with the CWC Chairman. I reproduce the essential points of the seminar programme here:

#### THE PROGRAMME OF THE "IGM SEMINAR", JULY 1999

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### **I. The Agenda of the CWC: assessment and definition of topics**

#### **a. Six working groups:**

- i. Personnel policy; working time; and social policy
- ii. New remuneration system and profit share
- iii. Employee suggestion scheme/total quality management; health and safety
- iv. Vocational training; further training; education
- v. CWC and employment security

#### **b. Report to plenary on the following:**

- i. Stocktaking for each issue: What has been achieved? Which of the issues are still relevant? How should they be further pursued?
- ii. What issues should the CWC focus on, with which goals?

### **II. The CWC and its supporting structures:**

Working groups to discuss and report back about the role and contributions of the:

- a. Supervisory Board
- b. Central Works [executive] Committee
- c. Economic Committee
- d. Negotiating Committee
- e. Central Works Council
- f. Commissions
- g. Project Groups
- h. Group Works Council
- i. European Works Council

### **III. The CWC's internal and external public relations**

Working groups to report to plenary their assessment of

- a. Which media (Intranet, Business TV, flyers, internal newsletters, email) are best suited to reach which target audiences (workforce, the local works councils, the trade union delegation, and external public opinion)
- b. How can each medium be optimally used?
- c. What (external) professional/technical support may be required?

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The aim of the first section of the seminar was to assess and if necessary redefine the CWC's political agenda. Six separate working groups were to discuss various sets of issues which had been on the agenda the previous year, such as personnel policy,

training, remuneration, health and safety, profit-sharing schemes, social policy and working time. The remit of each working group was to assess how much progress had been made in the course of the previous year, whether the topics were still relevant, what remained to be done, who should do it, and whether new aspects or topics should be added.

The second focus of the seminar lay on the CWC's own working structures and processes. The aim was to seek ways to improve the working practices of the individual working groups, to define the role and function of the committees, to find a balance between day-to-day work and strategy development, and to identify ways to improve the efficiency of the individual committees. Specific attention was paid to the perceived need to avoid redundant work by improving the coordination and cooperation between the various committees. Discussion was to focus on the general flow of information and communication, clarification of competences and responsibilities for content, and accountability. Overall, the discussion on these issues was to be guided by the following questions: "What's currently being done? What should be done? What must be changed so that this can be done? And, finally, where might problems of implementation arise?"

The third and final topic of the seminar was the question of the CWC's internal and external public relations. The goal was set to ascertain how and by which media the CWC wants to present itself within the company as well as outside the company. The key questions here revolved around the relationship between the CWC and the local works councils, the workforce, management, and the media.

The real focus of the seminar lay, perhaps not surprisingly, on the CWC and its supporting structures. Two themes in particular proved highly instructive for me: the first was a discussion of the role and competence of the commissions. This issue is discussed in more detail below. The second key issue which dominated the weeklong session was the discussion surrounding a proposal by the new Chairman to reorganise the leadership structures of the CWC, in particular by reviving the long-defunct Central Works Committee. Far from being a bureaucratic/technocratic idea, the controversy surrounding his proposals revealed much about the very self-understanding of the CWC.

The crux of the new CWC Chairman's proposal to reorganise the decision-making processes within the CWC was his proposal to "reactivate" the central works committee; this "executive" committee, has in practical terms long ceased to function at DaimlerChrysler, even though it is explicitly foreseen by law.

## The composition and role of the Central Works Committee by law

Before examining the discussion in more detail, it is first necessary to outline the legal context of his proposal.

The central works committee is analogous to the works committee set up at the local level: it is an executive sub-committee charged with running the day-to-day affairs of the central works council. In fact, Section 51 of the *BetrVG* refers to the analogous application of many provisions about local works committees<sup>17</sup>.

Section 51 of the *BetrVG* lays out the **composition** of the central works committee as including by right the chair and deputy-chair of the central works council; the number of additional members depends on the size of the CWC. For a central works council the size of that at DaimlerChrysler with its 30 full members, the Central Works Committee would thus consist of 9 members in all.

As for the **function** or **competence** of the central works committee, the law refers to the provisions for local works councils in Section 27 (3): *The works committee shall deal with the day to day business of the works council. The works council may by majority vote of its members delegate tasks to the works committee for independent action; the foregoing shall not apply to the negotiation of works agreements.* Section 28 (1) provides that the (central) works council may also set up further committees and assign them specific tasks.

## The composition and role of the central works committee in practice

As briefly outlined above, the *BetrVG* thus provides for the establishment of an (executive) central works committee to run the “day-to-day” business of the CWC. And indeed, the CWC at DaimlerChrysler has a central works committee—on paper, anyway.

By law, it should comprise only 9 members; in fact, the *BetrVG* implies a maximum limit of 11 central works committee members. Yet the so-called Central Works Committee at DaimlerChrysler has 14 members: each of the 12 plants is represented by the Chair of its local works council, the Sales and Service establishments are represented by the chair of the Sales and Service Commission, and the R&D sites are represented by their CWC representative. If they adhered to the *BetrVG*, the CWC

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<sup>17</sup> Section 51(1) of the Works Constitution Act refers directly to provisions about local works committees contained in Division III: Sections 25 (1), 26, 27 (2) and (3), Section 28 (1) 1<sup>st</sup> and 3<sup>rd</sup> sentence, and (2), Sections 30, 31, 35, 36, 37 (1) to (3) and Sections 40 and 41.

would only have had 9 seats to allocate among all these different sub-units; in light of the golden rule at the CWC that fair representation is the key to its legitimacy, the decision was made to expand the composition of the Central Works Committee to include all significant sub-units within DaimlerChrysler: i.e., each individual factory, the Sales and Service division and the R&D division. Again, and as is distinctive of federations, the principles of parity and representativeness play a fundamental role in the internal logic of the CWC.

Thus, DaimlerChrysler departs from the basic federal structure laid out in the *BetrVG* by expanding it to better take into account the need to ensure a coherent interlinkage between the central and local levels. As for the day-to-day business, we have seen that the “day-to-day” business of a CWC as large as that at Daimler is handled by its 9-person secretariat. Beyond that, the CWC has taken advantage of the opportunity to set up further committees by setting up a vast and seemingly comprehensive network of over 30 committees, project groups, and working parties.

The role if any of the central works committee, then, is primarily political. It should be noted, however, that the *BetrVG* specifies that the Central Works Committee is not empowered to conclude agreements on behalf of the CWC.

According to respondents and the documentation, the Central Works Committee at Daimler convenes rarely if ever. This tradition – or lack thereof – goes back several decades. The last two CWC Chairmen since 1945, Herbert Lucy and Karl Feuerstein, worked informally with a small “kitchen cabinet” rather than with a formally convened Central Works Committee, relegating issue-specific work to the commissions, committees, project groups, etc.

One highly relevant and active group has arisen out of this more or less defunct Central Works Committee however: this is the 5-person “Negotiating Commission”. This key group is also carefully representative: it comprises two members from the automotive division, two from the commercial vehicles division, and one member from the Sales and Service division. Attention is also paid to a balance between blue-collar (3 members) and white collar (2) members.

### **The proposals to re-organise the leadership structures of the CWC**

After Erich Klemm took office in early 1999, he proposed to widen the circle of colleagues with whom he regularly exchanged information and ideas. He proposed to “reactivate” the defunct Central Works Committee as a “Preparation and Coordination

Committee". He argued that it would be more democratic and transparent than to continue with his predecessors' "kitchen cabinet" tradition.

The implications of this proposal were obvious from the start: the wider the inner circle around the Chair, the less relevant would be the role of the plenary CWC. This trade-off was clear to all participants and informed the discussion that followed.

After some discussion, there were four proposals on the table. Taken together, they essentially laid out the whole spectrum from largest to smallest "inner circles". The discussions about the appropriate composition of such an executive committee of the CWC is a case study in the constitutional politics typical of federations. It reveals much about the CWC's way of working, the concerns of its members, and wider issues of power and influence.

*Proposal 1: reactivation of defunct (enlarged) Central Works Committee*

This inner circle would have 14 members: the works council Chairs from each of the 12 production plants, plus the Chair of the Sales and Service division commission, and the representative from the R&D division. The composition of this enlarged Central Works Council is heavily skewed towards blue collar representatives: the works council Chair of 11 out of 12 production plants are formally blue-collar representatives, while the representatives of the plant at headquarters, from the Sales and Service sites and the R&D sites are all three white-collar representatives.

*Proposal 2: Central Works Committee composed according to Section 51 of the BetrVG*

Nine members: Chair and Deputy Chair of the CWC, plus seven additional members elected from among the CWC members.

*Proposal 3: "Negotiating Commission" plus Committee Chairs*

10 members: the five members of the existing Negotiating Committee (two from Auto, two from Lorries, one from Sales and Service) plus the Chairs of the five official CWC commissions (Personnel Commission, Wages and Salaries Commission, White-Collar Employees Commission, Organisation and Data Commission, and Health and Safety Commission)

*Proposal 4: "Negotiating Commission" only*

Five members: two from Auto, two from Lorries, one from Sales and Service.

The CWC members were asked to break into working groups in order to discuss the advantages and disadvantages each of the following models of a "Preparation and Coordination Committee". A synopsis of the conclusions of each working group is presented in Table 5. These conclusions were put to the plenary CWC for further discussion.

*Arguments for and against Proposal 1: reactivation of defunct (enlarged) Central Works Committee*

The arguments for assigning a more important role to the enlarged 14-member Central Works Committee revolved around the fact that all significant sub-units within DaimlerChrysler would automatically be represented. This composition rule treats small and large sites equally. Furthermore, since membership would be an automatic function of office (local chairmanship), there would be no need to discuss or debate who is a member. Decisions taken could be expected to be binding, since the group would represent the formal majority of the CWC i.e., the respective Chairs of the local works council would be expected to be able to commit their works councils. Opinion-shaping would be faster, and more efficient. This committee would be an effective communication platform, since there would be no need to organise for new information or coordination flows. Finally, since not least for pragmatic reasons it assumes a clear demarcation from the Negotiating Commission, the Central Works Committee would not affect the work or proven reputation of the highly trusted Negotiating Commission.

At the same time, this proposal was criticised on the grounds of representativeness: while it would include all sites and represent the formal majority of the CWC, it would effectively exclude the subsidiary companies, and more controversially, the representatives of the white-collar employees. Because it would include by right the Chairs of the works councils of the production plants, it would be strongly skewed in favour of blue-collar employees: the only representatives of the white-collar employees would be the Chair of the Sales and Service Commission, the Chair of the R&D Commission, and the Chair of the works council from the plant at company

headquarters, who is actually a white-collar representative since they represent the majority of the workforce at company headquarters.

Pragmatic reasons against this proposal were also put forward. A group of 14 members would be too large to be able to engage in real discussion and content-based work. There would be no systematic inclusion of specific issue-based expertise, since membership would only be based on office and site, rather than qualification, experience or specific expertise. And because of the many demands on its members' time, it would be unlikely that all 14 members would be able to attend all of the time: the resulting sporadic and uneven attendance would impair the necessary continuity that such a cooperation and preparation committee would need.

But what decided the issue were the arguments based on the effects on the political/democratic dynamics of CWC work. The proposal essentially amounted to the CWC halving itself. If significant discussions are taken by one half of the group, what does this mean for the role of the remainder of the CWC? The role of the plenary CWC would effectively be reduced to merely nodding through decisions taken by the proposed Coordination and Preparation Committee: after all, these are the chairs of the local works councils, representing the formal majority of the workforce, able to commit their local councils. Even if decisions were to be formally taken in plenary, the so-called Preparation Committee would naturally take anticipatory decisions, fully expecting their recommendations to go through as proposed. It would be largely impossible for the other members of the CWC to influence decision-making; indeed the proposal was seen to entail a real risk of suppressing critical discussion.

*Arguments for and against Proposal 2: Central Works Committee composed according to the BetrVG*

Members pointed out that compared to the 14-member enlarged Central Works Committee, a 9-member Central Works Committee composed according to law would not necessarily represent the majority of votes on the CWC. It would therefore run less risk of abusing its position. A nine-member Central Works Committee would thus necessarily be accountable to the CWC. Furthermore, the balance between representation of white and blue-collar workers would be ensured, since the law required that each group be represented in proportion to employment figures. It would clearly not be possible for each site to be represented however; the fact that membership would not be a neat extension of existing structures was seen to be problematic. Since the seven additional seats would be up for election, some members welcomed the fact that committee members could be freely chosen from among all

CWC members on the basis of individual candidature or specific issue-based expertise, rather than their status. For others, however, this was an argument against this model: committee membership would have to be decided by consensus, which would give rise to potentially divisive debates about who (or which site) is a member and who isn't, and why. The CWC was divided on the issue of efficiency or workability of the model. Some felt that a group of nine members could be expected to work efficiently and consistently, while others argued that even a group of nine members would be too large to be able to regularly conduct extensive issue-based discussions. A nine-member CWC would furthermore have to organise entirely new means of securing adequate feedback and information channels. Finally, there would be no systematic inclusion of issue-based expertise.

*Arguments for and against Proposal 3: Negotiating Commission plus Chairs of five key commissions*

This model shared many of the perceived advantages of the 9-member Central Works Committee provided for by law: it was pointed out that it would be required to obtain legitimisation from the whole CWC since it would not automatically represent the majority of its votes, and that its relatively small size meant that it could work effectively and continuously. All of the working groups welcomed the fact that this model would ensure the highest degree of issue-based competence and expertise, since it would systematically include the Chairs of the key commissions. Such a coordination and preparation committee would therefore be firmly rooted in the actual work of the CWC as a whole. The political and technical expertise of the commissions could be brought to bear on the inner sphere, which would in turn serve to strengthen the role of the commissions. Indeed, this model was seen by many as a "natural" extension of the CWC's working structures, since it would draw upon existing channels of participation and feedback, and thus enable wider inclusion in the opinion-making process.

The lack of representativeness of this model was severely criticised, however: while some sites would be represented doubly, others would not be represented at all. And while the advocates of this model pointed out that the automatic inclusion of commission chairs would preclude debates about who is a member, others pointed out that this was in the long run a dangerous flaw in the model: it was conceivable that in future the commission chairs would not be chosen on the basis of expertise or trust, but rather on the basis of the site from which they are delegated simply in order to ensure that they have access to the inner circle of the CWC's leadership. This last argument



provides another indication that site representativeness is one of the most important criteria in people's minds.

*Arguments for and against Proposal 4: Negotiating Commission only*

The final steering committee model which was up for discussion was to upgrade the role of the existing 5-member Negotiating Commission. Here the criteria of accountability crystallised most clearly. While decisions could be well prepared and extensively discussed in a small circle, the CWC would clearly remain dominant in the background. Any final decisions would rest firmly with the CWC. Of course, not all sites could be represented, nor could the expertise of the commissions be systematically included, but this was seen as less problematic since no issue could be decided – even informally – without the approval of the whole CWC. On pragmatic grounds, it was judged that this group could work most effectively: its small size meant that it could not only discuss sensitive issues more comprehensively and openly, but that it could also be convened at short notice should the need arise.

It was pointed out, however, that to upgrade its role from its current case-by-case mandate would run the risk of overburdening the Negotiating Commission and its members. It was also pointed out that a steering committee made up members who not only represented the biggest sites, but who also hold all the key CWC offices runs the risk of consolidating too much power in too few hands. On the other hand, the negotiating commission has a proven reputation for integrity and negotiating skill, and it enjoys a high degree of trust and acceptance among the CWC members. It was welcomed that there would be no divisive debates about who is a member. In terms of representativeness, it is perceived as being well-balanced, since it includes representatives from both the automotive and trucks divisions, as well as two representatives of white collar employees. It was pointed out that while it might be entrusted to hold preliminary discussions, the Negotiating Commission was not an appropriate or legitimate external representative of the CWC. Since the main role of the steering committee would be an internal one, however, this was not seen to be problematic. It was also pointed out that the more discussions were relegated to this steering committee, the greater the need to coordinate positions and feed its discussions back to the CWC and its committees.

**Table 5: Synopsis of the working groups: Advantages and Disadvantages of each proposed model for a “Preparation and Coordination Committee for the CWC”**

Proposed models	Advantages	Disadvantages
<b><u>Proposal 1:</u></b>  <b>(Enlarged) Central Works Committee: 14 Members</b>	<ul style="list-style-type: none"> <li>• Inclusion of all plants &amp; NDL</li> <li>• Site-specific interests of all are included</li> <li>• No conflict between “large” and “small” sites</li> <li>• No discussion about who is a member, since membership is automatic (leads to high acceptance)</li> <li>• Decision-making more binding</li> <li>• Faster opinion-shaping</li> <li>• Effective communication platform: Minimizes need to ensure alternative flows of communication</li> <li>• Already exists, no new committee</li> <li>• Assumes/requires clear demarcation from negotiating committee</li> </ul>	<ul style="list-style-type: none"> <li>• Exclusive <ul style="list-style-type: none"> <li>○ represents formal majority of CWC</li> <li>○ not everyone can participate in process of opinion-forming</li> <li>○ Balance between different groups of employees (i.e., white and blue collar) not maintained</li> <li>○ No inclusion of specialised issue-based commission work &amp; expertise</li> <li>○ Most if not all members of inner circle are works council chairs</li> <li>○ Some strained relationships between Chair and deputy chairs</li> <li>○ Subsidiary companies not included</li> <li>○ Currently unclear who is delegated according to what criteria from the different sites</li> </ul> </li> <li>• Group too large <ul style="list-style-type: none"> <li>○ real discussion &amp; content-based work unlikely in such a large group</li> <li>○ too many members: unlikely that all members will be able to participate all of the time, since members already have too many different appointments to keep → no continuity</li> </ul> </li> <li>• Role of full CWC unclear <ul style="list-style-type: none"> <li>○ full CWC takes on different meaning</li> <li>○ What is role of “remainder CWC”?</li> <li>○ Anticipatory decision-making, expectation that CWC will follow</li> <li>○ Inner circle effectively a half-CWC: other half of the CWC would feel excluded</li> <li>○ Danger of split in CWC work</li> <li>○ Decision-making can hardly be influenced</li> <li>○ Risk of suppressing critical discussion</li> </ul> </li> </ul> <p>No legal basis, formally open to attack (e.g., by works councils)</p>
<b><u>Proposal 2:</u></b>  <b>Central Works</b>	<ul style="list-style-type: none"> <li>• Inner circle compelled to obtain legitimization through CWC</li> <li>• Smaller group can work more</li> </ul>	<ul style="list-style-type: none"> <li>• Not all sites represented</li> <li>• Commissions excluded: no systematic inclusion of issue-based expertise</li> </ul>

<p><b>Committee Composed according to Section 51 BetrVG: 9 Members (2+7)</b></p>	<p>effectively</p> <ul style="list-style-type: none"> <li>• Meaning of CWC greater than in current arrangement with 14 members</li> <li>• less risk of abuse of majority “majoritising”</li> <li>• White and blue collar workers represented in proportion to employment figures</li> <li>• individual candidature, thus membership could be based on expertise, not status</li> <li>• Can play leading role</li> <li>• Clear legal base, legal requirement fulfilled</li> </ul>	<ul style="list-style-type: none"> <li>• Decision-making process less binding</li> <li>• Membership must be decided by consensus</li> <li>• Debates about who is a member and who isn't...</li> <li>• Group too big for extensive content-based discussion</li> <li>• Increased need to organise adequate information flow</li> <li>• Impractical: Members already have too many different appointments to keep</li> </ul>
<p><b><u>Proposal 3:</u></b></p> <p><b>Negotiating Commission + Committee Chairs: 10 Members (5+5)</b></p>	<ul style="list-style-type: none"> <li>• Inner circle compelled to obtain legitimation through CWC</li> <li>• Small size makes group work more effective &amp; efficient</li> <li>• Inclusion of committee chairs means no discussion about who is a member, leads to high acceptance</li> <li>• Issue-based expertise ensured through inclusion of commission chairs</li> <li>• less risk of abuse of majority “majoritising”</li> <li>• Highest degree of issue-based expertise, networking, &amp; feedback</li> <li>• Strengthens role of commissions</li> <li>• Wider inclusion in opinion-making process</li> <li>• Uncomplicated discussions</li> <li>• Adequate feedback most likely</li> </ul>	<ul style="list-style-type: none"> <li>• Some plants represented doubly, others not at all</li> <li>• Possible lack of balance between different divisions</li> <li>• Selection of future committee chairs will be in consideration of site rather than issue-based qualification</li> <li>• Too big for real discussion, content-based work?</li> <li>• No legal base, formally open to attack</li> </ul>
<p><b><u>Proposal 4:</u></b></p> <p><b>Negotiating Commission only: 5 Members</b></p>	<ul style="list-style-type: none"> <li>• Inner circle compelled to obtain legitimation through CWC</li> <li>• Small size makes inner circle work more effectively &amp; efficiently</li> <li>• Can act at short notice</li> <li>• no discussion necessary about who is a member, leads to high acceptance</li> <li>• balanced composition</li> <li>• high trust</li> <li>• less risk of abuse of majority “majoritising”</li> <li>• Decisions can be prepared without having been <i>de facto</i> already taken</li> <li>• Final decision-making rests firmly with the CWC</li> <li>• CWC remains dominant in the background</li> <li>• Stays in old function with case-by case mandate</li> </ul>	<ul style="list-style-type: none"> <li>• Not all plants represented</li> <li>• No systematic inclusion of commissions</li> <li>• Will not improve discussion culture in the CWC</li> <li>• Greater need to ensure coordination and flow of feedback in all directions across all committees.</li> <li>• Risk of overburdening</li> <li>• Promotes mistrust</li> <li>• The issue of power</li> <li>• Not an appropriate/legitimate representative of the CWC</li> <li>• Impractical: members already have too many different appointments to keep</li> <li>• No legal base, formally open to attack</li> </ul>

### The CWC's decision to keep the inner circle as small as possible

The discussion lasted well into the next day of the meeting. The CWC members were asked to cast two votes: they were first asked to name the option which they would find unacceptable under any circumstances, then they were asked to name the proposal which they found most appropriate. The results of these votes were quite clear: for 18 CWC members the option of the enlarged Central Works Committee was unacceptable, and for 14 CWC members, the option of enlarging the Negotiating commission was the best option. The remainder of the votes were spread among the other options (See Table 6).

**Table 6: Results of the vote on leadership of the CWC**

Proposed models	Most appropriate	Under no circumstances
(Enlarged) Central Works Committee:	7	18
Central Works Committee Composed according to <i>BetrVG</i> :	4	5
Negotiating Commission + Committee Chairs:	9	8
Negotiating Commission only:	14	4

After final deliberations, the CWC decided to widen the mandate of the Negotiating Commission by assigning it a concrete preparatory and coordinating role. Rather than the large inclusive inner circle proposed by the new CWC Chairman, the CWC opted for a smaller exclusive inner circle which, by virtue of its exclusivity, would ensure that actual decision-making power remained firmly with the plenary CWC. What guided the discussion was the understanding that the larger any inner circle, the smaller the role of the plenary CWC. As a result, the risk was high that the role of the CWC as a whole would essentially be reduced to accepting foregone conclusions.

Several key criteria crystallised in the course of the discussion. Within the pluralist composition of the CWC, a key issue was that of **representativeness**: it matters who is part of the inner circle, i.e., which sites and which groups have direct access to what could develop into the locus of decision-making. It was clear from the outset that if

any political mandate were to be delegated to a steering group, this would inevitably have an effect on the role of the CWC as a whole. At the extreme, the role of CWC could be reduced to simply nodding through key decisions taken by the steering group, thus undermining not only the importance and legitimacy of the debates conducted in the CWC itself, but also the role of the work of the commissions. Linked to this is the issue of **legitimacy or accountability**: who “prepares” decisions on whose behalf? Indeed one working group coined the word “to majoritise” to refer to the risk that the position of majority could be abused, thus further marginalising minority positions.

**Pragmatic** arguments about possible tradeoffs between size or composition on the one hand, and efficiency or effectiveness on the other were also brought to bear on the debate. Chiefly, these were discussions about what realistically constitutes a workable group size, when does inclusiveness turn into unproductive diversity, and in particular whether or not the political and technical content-based expertise of commission work needed to be included in the steering group. As can be seen in the discussion of the role of the commissions (Section 5.3), it was unrealistic to expect that it might be possible to go from the broad network of specific bases of discussion and expertise developed in the various commissions, committees and project groups to a narrow steering group: on the contrary, there is a shared expectation within the CWC that before a decision is taken on any particular issue, it should be opened up to the whole CWC for discussion.

One group noted that three out of the four models lacked a sound **legal base**, arguing that this would leave its activities open to attack. This argument was somewhat specious, since regardless of the formal legal base of its steering group, all the CWC would need to do to ensure the legality of its work would be to take a decision as a CWC. The real risk lay in the *de facto* domination by the steering group, not its unclear legal base.

It is particularly revealing that the CWC was acutely concerned to **neutralise the issue of who is or is not a member** of such a steering group. The risk of potentially divisive debates on this issue was noted in all six working groups. A high value was placed on automatic mechanisms to define the membership of the steering group, thereby neutralising this issue: if membership is a function of office and/or site representation, then the CWC need not go through what was expected to be a difficult and potentially factious process of coming up with a consensus on this highly sensitive issue. The underlying realist attitude of the CWCs’ members is clear here: the fact that a consensus is needed to determine who is to be a member is seen as a potentially divisive issue, rather than one which might actually strengthen the group identity of the CWC. Particularly insightful was the concern voiced by one working group that if

the chairing of a commission automatically guaranteed a seat on the steering committee, then the selection of commission chairmanships might in future be made in consideration of site affiliation rather than issue-based expertise or personal qualifications or reputation. What this implies is that in the minds of the CWC members, the need to ensure that one's site is represented will at the end of the day override all other issues or considerations.

In the end, the importance of representativeness and guaranteed access was paramount: what decided the debate was the need to maintain the role of the CWC as a whole, since it was only here that agreed mechanisms of representation and fair access for all regardless of site, status, or group could be ensured. Interestingly, what came to light was an early recognition that any changes in the composition and meaning of a steering committee would have direct repercussions on the meaning and role of the CWC as a whole; it was obvious from the start that this was not just a discussion about more efficient structures under new leadership, but that any changes would have important implications for the political dynamics of CWC activity and its established and valued division of competence between the whole and its parts. This explains why the CWC in the end decided against its new Chairman's proposal and opted for a minimalist model of a 5-person steering committee. While there was no question of the Negotiating Commission being anything more than broadly representative, it did satisfy the need for transparent representativeness while at the same time ensuring that the CWC would always be able to have its say in order to correct potential biases or even abuse of power. Several pragmatic arguments were also in favour of this small flexible model. There was an acceptance that the new CWC Chair would at times want or need to convene a select and trusted circle, much as his predecessors had done. No one knew what this informal conferring might lead to. So what tipped the scales in the end was the shared realisation that no matter how deeply the Chair might discuss key issues with the Negotiating Commission, the plenary CWC would always have the last word. Importantly, even those sites who would have been represented in any steering committee model were acutely aware of – and sympathised with – those representatives from more marginal sites or groups. In the interests of maintaining the inclusive character of the whole CWC, the minimalist steering committee model was chosen.

### 5.5. The role of the CWC in the federalist system of interest representation

Asked what the role of the CWC was, one respondent put it as follows:

*“The main role of the CWC is for one, to agree regulations that are generally binding for the whole company, and then of course an important issue is to prevent being played out against each other, so to make sure that those rules which apply, apply in the same way for everyone, otherwise it leads to a situation like we had with the breaks policy, that one site is played out against the others and that’s a really great technique that management is working with there. They throw us a chunk so that we all jump all over each other, and attack it like dogs that bite each other and tear each other apart, just to get this chunk of meat” (11/3).*

This vivid statement captures two of the rationales behind federalism as summarised by Føllesdal (2003). Firstly, cooperation develops in response to an external challenge – in this case, management’s attempts to play sites against one another. Secondly, there is an inward-looking recognition that coordinated strategy and common rules of the game is a common good which can only be achieved at the central level.

What emerges out of the interviews with CWC members is a universal consensus that the CWC is meant to fulfil above all a political function—next to negotiating cross-site agreements jointly, the CWC is expected to coordinate policy; coordinating policy amounts to jointly agreeing guidelines for local policy or strategy. The chief purpose for such coordination is to prevent the sites being played off against each other. Even the more functional descriptions of the CWCs task—to negotiate top-level, encompassing agreements on cross-site issues – have the background reasoning that it’s about laying down the same rules for all sites; if competition between sites is inevitable, then the task of the CWC is to establish as level a playing field as possible.

The key point is that the work of the CWC is as much about negotiating ground rules among its members as it is about negotiating as the CWC with central management on behalf of all sites. These are two of the primary rationales behind federal political orders: uniting in the face of a shared external challenge, and countervailing the fragmenting effects of differentiation within a complex system of mutually dependent sites.

## Functional vs. political characterisations of the CWCs work

Nearly all CWC members in effect cited two roles for the CWC: on the one hand to negotiate binding agreements for issues that have cross-site implications, and secondly to coordinate the work of the local works councils. The first is clearly provided for in the *BetrVG*, but the latter is a political- strategic decision. As different as the tasks and their justifications are, however, the CWC members seldom rigidly differentiate between the two—the dividing line between the two is fluid.

Functional responses focussed on the CWC's responsibility for dealing collectively with issues that clearly affect more than one site, while more political characterisations highlighted the CWCs role in coordinating and unifying works council policy across the company.

### *The Rules of the Game: functional conceptions of the role of the CWC*

Some respondents focussed explicitly on the functional justification/legitimacy of the CWC's work, citing its competence to negotiate generally binding framework agreements for all issues which have cross-site implications, as provided for in the Works Constitution Act (*BetrVG*). Here, some respondents cited the areas in which the CWC is undisputedly legally competent, such as profit share plans for the whole workforce, the health insurance or pension schemes, or health and safety regulations regarding workplaces with display screens (8/3, 1/3, 21/5). The fact that respondents called these "*classic CWC topics*" demonstrates that the CWC members are keenly aware of the issues for which the CWC is clearly competent in terms of the *BetrVG*. Others, however extended the role of the CWC to cover all issues which have cross-site implications. "*The role of the CWC is to negotiate on issues that go beyond the ability of local works councils to regulate. Sure, this stems from the law, it's also true for many other issues in which there are common interests across different plants*" (10/2, similar wording in 23/2). In the light of the fact that the CWC enjoys significant legal leeway in taking up issues, the distinction between "central" and "local" issues will be discussed below in more detail.

Rationales for such 'functional' descriptions of the CWC's tasks included ensuring the "*same framework conditions on all sorts of issues, the same preconditions for all sites*" (2/3); "*to set up uniform rules for all sites [...] to make sure that those rules which apply, apply the same everywhere*" (11/3); "*cross-site rules, to ensure that we don't have a different rule in every plant*" (26/2); "*to negotiate agreements that can't be negotiated at the local level*" (23/2, similar wording 10/2); "*to coordinate agreements that affect everyone*" (9/3).



*United We Stand, Divided We Fall: political characterisations of the role of the CWC*

The CWC's coordinating role is not limited to coordinating individual policies, however, as the functional descriptions cited above might suggest. To many CWC members, the primary role of the CWC is to keep the various divisions and branches of the company politically and strategically aligned with one another. Respondents used such images as the links of a chain or a closing of ranks; many referred to the CWC as a "*Klammer*", a clamp or bracket that holds objects together.

There are many sources of potential divergence. Each site needs to function as part of the whole. Each plant needs to hold up its end of a consistent political strategy. DaimlerChrysler is a truly mixed bag of large and small manufacturing sites which either make parts, do final assembly or both, R&D sites, and Sales and Service establishments. For representatives from smaller plants, the Sales and Service establishments, the research and development sections, or the guest representatives from subsidiary companies, the CWC serves to keep all the bits and pieces of the company moving in the same direction. Here, the exchange of information and the coordination of strategy was seen as the most important task of the CWC, since there is less scope to actually closely coordinate the approach to individual issues across such diverse sections of the company.

Beyond the heterogeneity of the different individual plants in terms of size, products, and prosperity, one of the main fault lines lies between the passenger vehicles division on the one hand and the commercial vehicles division on the other. For many respondents, the most crucial task of the CWC is to hold these two divisions together. According to CWC members, this cohesion between the two key divisions is increasingly threatened by company policy which increasingly aims to treat different parts of the company differently.

It is the need to meet this threat of whipsawing head on which is at the forefront of many respondents' assessment of the role of the CWC. For nearly all CWC members, this issue hovered in the background, and when asked what role the CWC fulfils, nearly half of the CWC members explicitly mentioned the need to counteract company attempts to play sites off against one another.

This is the rationale behind the CWC's role in enabling the exchange of information and in coordinating political and strategic approaches. Management "*is always trying to play sites off against one another, and that's why it's so important that we compare notes, that we see, what are the others doing, where is it all going, what's happening over there*" (8/3).

*"Individual sites' vulnerability to blackmail has to be prevented, in future we'll have to play a stronger role here" (4/3). "The CWC needs to make sure that uniform rules are applied, so that sites are not played off against one another" (28/3). "The CWC cannot in any way permit attempts to play sites off against one another" (34/2). "That's a new problem, sites are played off against one another in ways that never used to be. And that's where the CWC has a strong function, a very collegial approach" (28/3). "The danger is there, that the sites enter into a rivalry with one another, and pointedly only ever perceive their own interests, surely not in a malicious way, but it's often a question of, well, survival is maybe exaggerated, but it really is about important question [...] so I can't imagine that we could deal with this sensibly without the CWC" (30/7). "The blackmail policy goes across the whole company, across all the plants. It is sometimes so brutal that every plant gets blackmailed, that the concession from one site is blackmailed out of them to the extent that a supplier contract from one plant to another is made dependent on their ability to compete with any other supplier in the world" (22/4). Citing the uniform arrangements for on-call duty technicians, which had been negotiated at CWC-level for all the Sales and Service establishments, one CWC member said that that had "prevented a competitive rivalry between establishments, in which the weakest site is always the loser" (10/3).*

One of the representatives of a subsidiary company described the guest's role in the CWC as follows: *"the goal of the exchange of information and the coordination in the CWC is to prevent being played off against one another. So that [the CWC] sees why we [in subsidiary companies] may have agreed to certain things, why maybe we had to agree certain things, but also so that my local works councils see where is the benchmark [set by the CWC], and try to stay as close to that as possible. That's my own role in the CWC, too" (19/5).*

Several CWC members referred to a recent incident, in which one site had found itself unable to resist making important concessions that were not agreed within the CWC. *"For me the CWC is very important, that it's an institution, that you can't split it, otherwise when I see how it happens, how [one site] can agree something and the next thing you know they're systematically putting pressure on the smaller sites, and if the CWC isn't steadfast, then that will split us, and that can't be allowed to happen" (24/5).* Referring to the same incident, another CWC member said, *"it was clear to me, once that agreement was signed, that we were next, and that's why I think the main role of the CWC is that we don't exclude each other, that we don't let, well, rivalry come up" (4/4).*

CWC members are clearly aware of the fact that differentiation carries with it grave dangers, and that the CWC plays a central role in preventing fragmentation. As one CWC member put it, *"a wild proliferation [of policies and conditions] on the same issue should never happen, at that moment, we'll split up, and the CWC is clinically dead" (24/5).*

## **The CWC as a permanent forum for communication and exchange**

The CWC also serves as an important regular communication platform between works councils (23/2). One respondent referred to the CWC as a works council network (16/3); another pointed out that *“this exchange is one of the most important issues, I hold that exchange between individual councils and the individual works council Chairs to be very, very important”* (8/3). As another respondent put it, *“the goal of all this cooperation in the CWC and the commissions is simply to know from one another what’s going on, what’s happening where. So I want so know the local agreements, want to know what’s being agreed there, and it’s just as important to me that the others know what we’re doing locally”* (19/5).

## **Standardisation of working conditions?**

The CWC has a clear task in shaping policy (*“Gestaltungsfunktion”* 27/4) for all issues shared across the whole company. *“At the CWC we have a level, where we really formulate our political goals together, you know, really in the sense of where, what and how”* (26/29). *“The CWC should pull together successes and if possible transfer them to the whole company. I don’t understand why everyone across the country should have different rights, different conditions, that’s what the CWC is there for. But if you ask me if the CWC achieves that, then I have to say ‘no’”* (13/3). Interestingly, this respondent qualifies his own very high expectations with *“if possible”*, revealing the limitations of any expectations of standardisation.

In fact, all respondents stop short of expecting the CWC to ensure standard working conditions. It is widely accepted that there will be divergence, that there are perfectly justifiable reasons for local variations: it is up the CWC to recognise when variation becomes counterproductive to its aims and to act accordingly.

The chief political aim, then, is that of achieving a balance between unity and differentiation. *“The biggest task is that of coordination, cohesion, to see where the whole thing is going, to build unity, that’s the main task. To achieve this coordinating task and develop policies that point the way forward, to set a certain framework”* (33/4). There is a perceived need to *“achieve a balance between sites”* (6/3) *“in terms of working conditions”* (21/6), *“to establish common ground”* (10/2), and *“cooperation between the plants, the Sales and Service branches and the subsidiary companies”* (34/2). The CWC needs *“to maintain unity, keep an eye on parallel developments, keep us from drifting apart. With very few exceptions we’ve managed that”* (31/2). One respondent also explicitly accorded the CWC a clear protective function for individual works councils and sites (27/4).

Cooperation is a means to an end. Many respondents highlighted the need to develop and maintain a common approach as a prerequisite for unity and concerted action. The CWC needs to develop *“a common approach, everything that has to do with commitments [among CWC members], to find an approach that we can all carry together”* (8/3).

When asked to what extent the CWC succeeds in developing and implementing such a common approach, one CWC member replied, *“in part, yes. Those sites with strong works council work are in a position to implement more or less the approaches which were agreed in the CWC”* (11/3).

### **CWC and top-level management**

The CWC is the counterpart to top-level management of DaimlerChrysler’s automotive and commercial vehicles operations. Access to top level management is cited as an important aspect of the CWCs work by several respondents. Since for many CWC members their only contact to top-level management is in the context of the CWC, it is somewhat surprising that this aspect is not cited as often as one might expect. Yet the relative scarcity of references to contact with top-level management strengthens the impression that the main thrust of the CWC’s work is internal, i.e., in bringing together representatives of each site.

According to one respondent, the Chair of the CWC always has *“to have the ear of the executive management board”* (8/3). The CWC wields influence at the top of the company, and can influence landmark decision-making at that level far more than any local works council can (33/4, 12/2, 10/4, 27/4). Indeed, the CWC’s access to top management is one important avenue for its work: to get an issue moving, the CWC can throw its weight behind an issue by initiating discussions with central management (27/4). The CWC also serves as a *“lightning rod”* for local works councils who are in difficulties (15/15).

As one respondent pointed out with respect to interaction with top-level management, the role of the CWC is not limited to issues in which it is formally competent, such as in negotiating framework agreements where local management is not competent to act as a negotiating partner. The CWC also plays a role in cases in which local management is not willing to take up negotiations (7/4). In such cases, pressure is brought to bear on local management via top-level management.

## **The role and competence of the Commissions**

It is no understatement to say that that the work of this elaborate network of commissions, project groups and task forces is the very foundation for the work of the CWC. It is here that issues are thrashed out, that common positions are developed, that the nitty-gritty of interest aggregation actually takes place. As will be seen below, the delegation of responsibility to these commissions is not entirely free of ambiguities. On the one hand, they need enough autonomy to be able to work effectively, on the other, the CWC is careful to keep the reins in its hands.

Furthermore, and as will be seen below, the fact that the commissions allow for the systematic inclusion of local works council members has important implications for the functioning of this multi-level system as a whole.

### *Discussions within the CWC about reorganising and streamlining commission activity*

As discussed in Section 5.4., the Seminar held by the CWC in July 1999 focussed on its working structures. Next to the discussions about the role and remit of the preparation and coordination committee, a key focus of the 1999 Seminar lay on the elaborate substructure of commissions, project groups and task forces

The discussions about the collective leadership structures of the CWC revealed much about the CWCs own understanding of its roles and decision-making structures. The discussions about the role and responsibilities of the substructures of the CWCs is similarly revealing.

There is a clear consensus that the purpose of the commissions' work is to structure the work of the CWC. At the same time, CWC members recognise that this elaborate network of substructures needed clarification, or – as one CWC member put it -- the overgrown garden needed to be pruned and weeded (Interview notes).

In the seminar, the CWC members and guests formed working groups to discuss the role of the various committees. I had the opportunity to act as facilitator for the working group which was asked to focus on the following questions: "What does the CWC expect from the subcommittees?" and "What does the CWC have to do so that the committees can do their job?" Since the CWC members had been asked to go to the working group focussing on a subcommittee of which they were themselves members, the CWC's 'key players' participated in the other groups, while the working group

focussing on the CWC itself was the catch-all group for everyone else. Therefore, those CWC members who play a less active role in commission work joined 'my' working group on the CWC. The discussions about the CWC's expectations which are summarised below therefore more likely reflect the views not of the key players, but of the potentially marginalised CWC members instead.

The working group on the CWC reached the following conclusions about what the CWC could expect from the subcommittees: firstly, the committees are expected to deliver concrete, decision-ready proposals. For its part, the CWC must provide the commissions with a clear mandate and a clear formulation of their objective. The commissions must thoroughly explore issues from every angle, take into account the wide variety of different interests and views, and develop alternatives where appropriate. They need to work efficiently so that the CWC can focus on the truly controversial issues. They must have the courage to commit themselves to a clear, unambiguous position. A key prerequisite for effective commission work is a high degree of mutual trust and an open working atmosphere. No one should ever feel sidelined; instead all points of view must be taken into account. Overall, the work of all commissions and committees must be transparent; ideally, everyone in the CWC should have an overview not only of which issues are being dealt with by the various commissions, but also of the state of play within each commission.

The commissions are also clearly seen as a bridge to the local works councils and, by extension, to the workforce. The working group therefore recognised that the commissions must ensure the flow of information to and from the workforce. They must ensure acceptance among the workforce for the work of the CWC. They must be perceived as being both competent and trustworthy. Finally, the commissions play a role as sensors: according to the working group, the commissions must not only work through the issues they have been assigned, but they must also remain sensitive to potentially new topics and issues. They have a responsibility to carry these new issues into the CWC.

This is certainly a tall order. But the work of the commissions is recognised as a fundamental part of the work of the CWC; accordingly, as will be seen below, members of the CWC reiterated these expectations in the interviews.

## **Assessing the need for a central approach: Cross-site till proven otherwise**

It may only be a slight exaggeration to claim that in a company as complex and intertwined as DaimlerChrysler, any measure is assumed to have cross-site implications until proven otherwise. Whether the CWC has identified policy areas in which strategic coordination is needed, or whether they anticipate that new measures introduced by management will require a coordinated response, the myriad issues confronting the CWC need to be sorted through, their potential implications identified, sticking points isolated, and possible responses coordinated across sites.

The commissions are at the forefront of this process of sifting through the profusion of issues. They represent an important forum for filtering out areas for CWC activity. The work of the commissions can also be quite explorative: they provide the opportunity to air concerns, and to discuss whether a problem is widespread and whether its solution might benefit from being a cross-site one. This was one of the functions highlighted by the working group at the CWC seminar in 1999 (see Section 5.4.). Whether or not the CWC actually becomes active, then, the CWC and the commissions serve to cement an exchange of information and experience as a precondition for cross-site cooperation. The commissions offer the opportunity to explore a coordinated, collective response. As one CWC member put it, *"Even if the CWC doesn't actually do anything, at least you have the possibility to respond in a coordinated way. It's good to know whether my concern is shared by colleagues from other sites, whether our approach might even be supported by other plants"* (30/8). He went on to highlight the need to include the different points of view and interests from a very early stage: *"There's such a huge range of issues we're dealing with [...] So it's important at CWC level to bring together the points of view of the different plants, different ideas, thoughts, approaches, and then to develop it into a joint approach"* (30/8)

## **The need to reduce complexity**

Besides exchanging information and sifting through the multitude of issues arising out of the local sites, the commissions serve to reduce the complexity inherent to the company-wide implications of any given issue. When asked to explain why commissions are necessary, several CWC members highlighted this need to structure the work of the CWC on increasingly detailed issues, since there is no way that the whole CWC can grasp all the details for any given issue (31/3; 6/4; 8/9-10; 32/3; 23/3). The host of interlinked topics confronted by the CWC must first be picked apart and worked through by the commissions, then decided and implemented by the CWC.

To provide a sharp focus out of the blurry complexity of an issue is not only a technical task: it is clearly recognised as a political task. The fundamental task of the commissions is to distil the political essence of an issue so that the CWC can make a politically informed decision. *"The issues have become so specific and specialised, so demanding, that the CWC can no longer simply assess the situation politically and decide accordingly. The commissions must work through the factual issues in great detail and must also define and stick to a clear political orientation in their discussions with management, which is something that is no longer possible within the CWC, because the variety of topics and tasks has got to be so huge. The commissions must have a knack for bringing the whole wide spectrum onto a single platform in the CWC, so that even the last member understands what's at stake. This is what sets a commission apart, not speaking gobbledygook, but preparing and presenting the actual factual content in such a way that its significance is instantly recognisable, that the political dimension is thus recognised, and that the CWC can, based on these presentations, take a decision"* (33/5). As another CWC member put it, *"The commissions need to crystallise out exactly what's at stake, what are the pros and cons of any proposed strategy, what are the essentials. I don't need a 5-page draft agreement – just tell me what's at issue so that we can form an opinion"* (15/10).

### **The problem of overlaps, or specialisation as the antithesis of complexity**

At first glance, the network of commissions, subcommittees and substructures appears straightforward if elaborately systematic and comprehensive. It seems as though every issue has its place. However, from time to time, this specialisation of committee work is counterposed by overarching issues; specialisation runs counter to the complexity of many of the issues on the agenda of the CWC. Some issues simply cannot be clearly demarcated as the remit of the one or the other commission; instead a measure may have repercussions which impinge upon the work of several commissions. The fact that real-life complexity is the antithesis of specialisation highlights the need for increased coordination if the potential effects of a single, overarching measure is dealt with in different commissions.

For example, at the time that this research was being conducted, the company was in the process of developing and introducing a new production system. Since the introduction of a new production system can result in an overhaul of existing task allocations or job descriptions, it is clearly an issue for the Personnel Commission. Since the remuneration system may need to take such new or revised task allocations or combinations into account, the Wages and Salary Commission and the Central Parity Commissions may need to become active. New forms of organisation of the planning stages of production, in particular if these draw upon performance-related



data, may mean that the Organisation and Data Commission needs to keep an eye on the planning process. Finally, any new forms of work organisation that are developed within the framework of the a new production system must be dealt with by the Commission on Workplace Organisation and Design; the Workplace Safety Commission must ensure that standards of health and safety protection are adhered to; and since any new forms of work organisation must be covered in the training policies, the commission responsible for vocational and further training may need to take the issue on board as well. What may read as a rather Kafkaesque list of committees is in the context of the CWC's ways of working simply a reflection of the need to accommodate such inevitable overlaps.

### **Representativeness**

Not surprisingly within such a federalist system, the issue of representativeness is a recurring theme. It is the key criteria underlying the perceived fairness, transparency and solidity of the work of the commissions, project groups, task forces, etc. It is of utmost importance that every plant can have its say in the commissions' deliberations. As one CWC member put it, *"It's not about people, it's about sites. I don't work in the commission as a representative of myself as a private person, I'm there to represent my site (32/3).*

Even if within the commissions, work is delegated to smaller working groups, it is always important to allow representatives from every plant to scrutinise the results. *"It's easier to thrash [a problem] out in small groups of four or five, then that gets put before the commission, so every plant can have its say before it is brought before the whole CWC"* (6/4). And even if a minority opinion does not find its way into the final outcome of the commission's work, then there's another chance to put forward plant-specific points of view once the issue is brought back into the CWC (6/5).

As a rule, the commissions are chaired by a CWC member from one of the larger sites. Some CWC members see this tradition rather pragmatically. As one CWC member from one of the smaller sites pointed out, *"the chairmanships of the commissions usually reflect the needs of the biggest plants. That may be good, since many issues need chairmen with strong power resources, they also have to be able to assess what would be acceptable in the biggest plants and what wouldn't. Implementation of an agreement or a strategic decision is much easier in a smaller plant like mine, it's much easier and faster, that's not the case in the bigger plants"* (9/2).

Several CWC members clearly recognise the commissions' work as another arena of centralised interest representation and aggregation. It was pointed out that *"you need to have good people to send to the commissions, otherwise you can forget it. There's no point in having someone there who just says 'yes' and 'amen': I need – we need – to be in a position to put forward and defend the interests of our site"* (15/10). Another sees commission work as an additional source of influence for his local site: *"My local member can help to put across our positions in the commissions. There's maybe not much that a local works council member can do, but it is another source of influence on the CWC, it's lobbying, really. And if that works out, then it's an advantage"* (2/7). He sees local works council involvement as upgrading the position of the local site in the CWC (2/6).

### **Issues of power and control: control via iteration**

The CWC is confronted by a dilemma. On the one hand, the sheer scope and sheer complexity of their work requires that it be spread across many shoulders. At the same time, they are well aware of the fact that in structuring issues and preparing positions, crucial political decisions are made along the way by the commissions. There is no such thing as a purely technical decision. In their work, the commissions select and reject a range of solutions and criteria. The CWC is required to make a leap of faith, to entrust this work to the commissions. At the same time, they are understandably reluctant to delegate complete decision-making authority to others.

While there is a widespread recognition that decisions taken by the CWC need to be structured by the commissions beforehand, and that this process of structuring decisions is already fundamentally political in nature, there are also mechanisms in place which aim to ensure that the whole CWC is kept in the loop while the basis for decision-making is being prepared. The solution found by the CWC to deal with this issue can be called iterative delegation. It is a combination of trust and control. The treatment of issues by the CWC and the commissions is iterative: when an issue is first raised, it is first discussed in the CWC, before being assigned to a commission for further deliberation. The initial discussion in the CWC serves to identify the main sticking points, as well as the any potential fault lines across the plants. The interim results of the commissions' work are regularly presented in the plenary CWC. It is here that objections can be raised, corrections or shifts proposed. Throughout the process, CWC members and the CWC Chair informally keep an eye on developments within the commissions, too.

There is thus a broad consensus that the commissions should provide the CWC with an outcome about which decisions can be taken, but at the same time the iterative process,

as well as the reservation of the final decision in the CWC ensures that everybody still can have his or her say. *“Yes, the commissions should provide the CWC with material which is ripe for a decision. But there’s still enough opportunity to discuss it in the CWC. It’s not as though the commissions are assigned an issue and the next thing you know they’re presenting a final agreement. In between there are interim reports, in which objections can be raised or changes can be suggested. And even if a draft agreement is presented, the CWC still files and polishes the various points and paragraphs”* (1/4). According to another respondent, *“what’s presented in the CWC as the basis for a decision is either a call for help, ‘we’re stuck, this is where we’ve got to, what should we do now’ or it is truly a solution proposed by the commission that is put to the CWC for a final decision. But in between the issue is shuttled back and forth between the commissions and the top leadership or the whole CWC* (22/7).

As one long-serving respondent pointed out, *“Herbert Lucy’s trust [in the commissions] was not boundless. Of course he made sure that issues could be thoroughly dealt with, that the organisational support was there, he really pushed the commissions to confront issues, to make sure they really worked hard and didn’t opt for easy answers. But he never let them take the final decision, he always made sure that the core decision was made in the executive committee or in the CWC, and then delegated to the commission with a clear mandate to negotiate in a certain direction. It was similar under Karl Feuerstein”* (3/6). Another CWC member made it clear that issues of control are always involved in delegation: *“The substructure has to be in place so that you can delegate, but delegating makes it harder for some Chairs or even the CWC Chair to keep all the pieces together”* (15/10).

As another CWC member put it, *“It is essential that the issue and the general political direction is first launched in the CWC, then the details are worked out in the commission to a certain degree, but then the issue has to be brought back into the CWC* (16/5). *“The journey is always interrupted along the way, to check back with the CWC. We don’t just go off and negotiate something and then come back with the final result”* (11/5). Another CWC member likened the CWC to *“a security brake. The CWC is always involved in the fundamental discussions, sometimes issues are sent back to the commissions if what the commission came up with simply does not accord with the whole CWC’s understanding of an issue. So in the CWC we always have the opportunity to say, ‘C’mon, go back to the drawing board.’ I think that’s a pretty good process”* (24/4).

Notwithstanding these control mechanisms, trust is recognised as a key feature of delegation. The members of the CWC recognise that they as a group cannot possibly cope with all the complexity; they therefore need to distribute that work across an extensive network of working groups. If they are prepared to assign an inherently political task to a commission, then they must also be prepared to trust the commission to accomplish that task. *“Maybe I can define the borders right and left within which the*

*commission should find its solution, define our overall tendency as a CWC. But having both [control over the outcome and relief from the workload], that doesn't work... That's the real test: you can't on the one hand satisfy the expectation that decision-making authority and competence should be delegated and at the same time insist on the right to check everything that everyone else does. That just doesn't work" (22/7). As another CWC member put it, "I don't think it's good if all the decisions are made in the commissions, and the CWC is presented with a fait accompli. The CWC must make the final decision, but a certain amount of independence has to be left to the commission. It's a fine line, really" (16/5).*

## **5.6. The role of the local works councils within the federalist system of interest representation**

Føllesdal (2003) has pointed out that one of the key philosophical issues raised by federalism is the appropriate allocation of authority. He points out that it is necessary to critically assess "the alleged grounds for federal arrangements in general, and the allocation of authority between sub-units and central bodies in particular."

The role and competence of the local works councils within the federal political order of the CWC therefore bears close examination.

### **Shared sovereignty**

Federalism is about sharing sovereignty. As pointed out in Chapter Three, the formal allocation of authority between the local works councils and the central works councils is laid out in the *BetrVG*.

This allocation of authority relies on the principle of subsidiarity, whereby a decision is to be taken at the lowest possible level, unless delegating it to a higher level would ensure higher comparative efficiency or effectiveness in achieving its goals. The competence is defined in relative terms rather than absolute terms. Put simply, the CWC as a central body has as much authority as it collectively perceives is appropriate. Where there is little or no perceived need for cooperation, there will be less cooperation. Conversely, where, as will be seen to be the case at DaimlerChrysler, there is a widely shared perception of mutual interdependence among sites, there will be a high degree of authority delegated to the central body.

In other words, the local works councils decide collectively what the CWC can and cannot decide. The fact that the local works councils do, as a rule, reserve the right of final decision as provided for in the *BetrVG* only strengthens this notion of "borrowed"

powers within a federal political order. The legitimation for handing over political powers to another body must be strong indeed. At the end of the day, it is an entirely political decision which is not taken by the few, but by the many, which renders it all the more complex. It is this issue which lies at the heart of this dissertation and to which we return again and again.

### **The importance of local autonomy**

The actual policy and strategy of employee representatives is determined within the contested arena of competing and sometimes overlapping competences of the local works councils and the central works council.

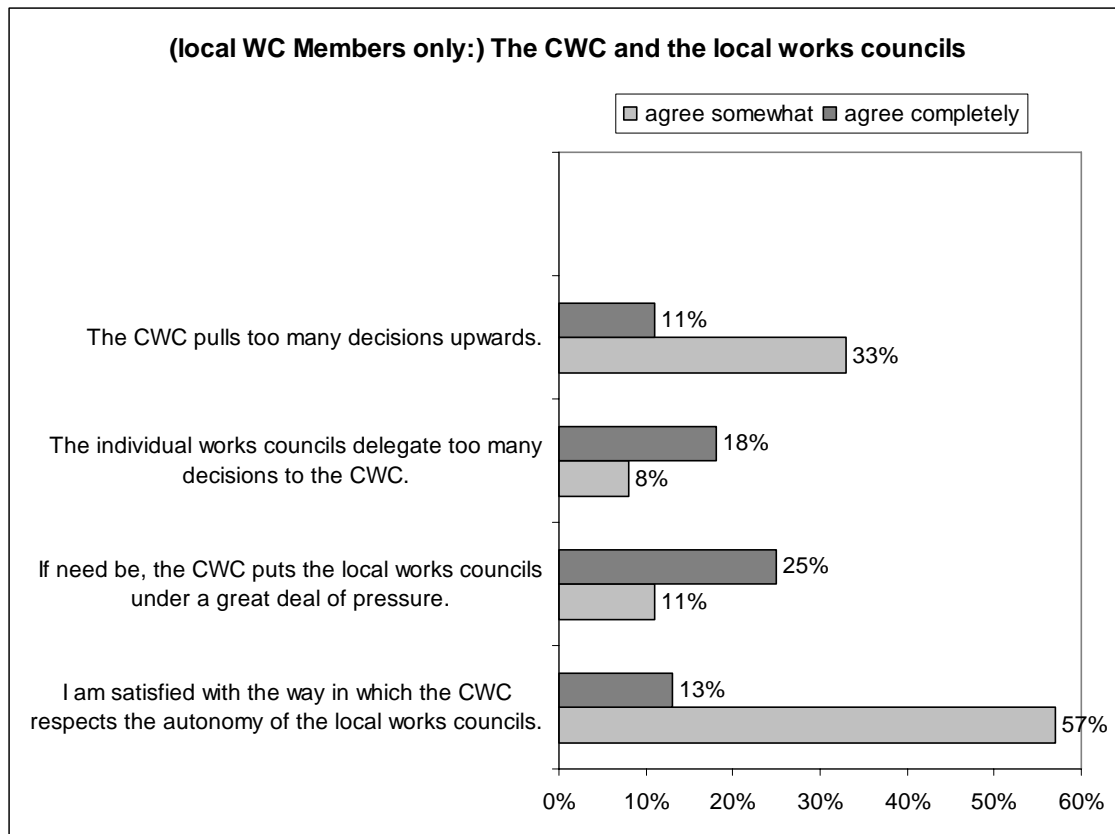
Section 50 of the *BetrVG* states clearly that the central works council “shall not be deemed to be a higher organ than the individual works councils.” Local works councils are thus not ancillary, not subordinate. In practice, however, this distinction may only be a formality: an overbearing CWC may risk cowing local works councils into acquiescence. Local works councils are autonomous, but in light of the wide range of CWC activity at DaimlerChrysler in particular, there is some concern among local works council members that an overbearing CWC undermines their freedom to act as they see fit. As one CWC member recounted, he is sometimes greeted by local works council members with “*smug comments, like ‘so what has the all-powerful CWC decreed this time?’*” (18/26).

Because this is a widespread view in other companies, and in particular because I encountered this view in my conversations with local works council members at DaimlerChrysler, I included the issue of local works council autonomy in the postal survey of local works council members.

Asked whether they were satisfied with the way in which the CWC respected the autonomy of the local works councils, 70% were somewhat satisfied or very satisfied. Because the distribution of authority and competence is often clarified informally, it is instructive to look a bit more closely, however. For the majority of respondents, the distribution of decision-making competences seems to be fairly balanced. A glance at the minority opinion however, allows a more focussed view: according to 44% of respondents, the CWC pulls too much decision-making authority upwards at the expense of the local works councils’ autonomy. According to 26% of respondents, local works councils for their part delegate too much decision-making authority to the CWC— in other words, the CWC is burdened with too many problems that the local works councils should solve on their own. In implementing its collective strategies,

according to 36% of respondents, the CWC sometimes puts local works councils under a great deal of pressure.

**Figure 22: The CWC and the local works councils**



### Coming together or holding together?

Føllesdal (2003) has pointed out that democratic interlocking federations, such as that at DaimlerChrysler, alleviate rather than give rise to secessionist tendencies (Simeon 1998, Simeon and Conway 2001, Linz 1997). It has been argued above that the CWC is clearly a case of “interlocking” rather than “separate” federalism. There are myriad cooperative ties that bind the various levels together; the data supports the argument that it is this tightly meshed network of contact, communication and common policy development that provides the foundation for the CWC’s cooperation.

It has been suggested that federalist movements tend to solidify and strengthen rather than contain fragmentation, and that attempts to contain the centrifugal forces which

prompt “federalist responses” in the first place are inherently unstable. Føllesdal (2003) suggests that previous research about the genesis of federal orders is marked by a sampling bias towards “holding together” federalism; this “makes it difficult to assess claims that federal responses perpetuate cleavages and fuel rather than quell secessionist movements.”

Indeed, the experience at DaimlerChrysler suggests that federal systems can act to bridge cleavages and fuse the parts together. I have argued above that the CWC more aptly falls into the category of “coming together federalism”. Firstly, the basic premise of the *BetrVG* is that there will be a local works council wherever this is legally possible. Cross-site institutions such as central or group works councils are established as a second step wherever there is more than one local works council. In this sense, the system builds upon the local level, rather than breaking up a central level to allow more autonomy for the local levels, as would be the case in “holding together” federalism. Furthermore, at DaimlerChrysler, the basic skeleton framework of cross-site cooperation provided by the *BetrVG* has developed into a fully-fledged and expansive system of close policy coordination which is supported by a nearly universally shared understanding of the need for such close and tightly intermeshed cooperation. This shared understanding is evident not only in the perceptions of the CWC members themselves, but also in the points of view and expectations expressed by the local works council members (See Section 5.5). Overall, this dynamic underscores the movement towards “coming together federalism” rather than “holding together federalism”.

### **Delegation means inclusion**

CWC members and local works councils can rely on the principle that their effective veto right is protected most of the time. There is thus little or no risk in delegating responsibility for an issue to the CWC, as long as the local works council reserves its right of final decision. On the contrary, the delegation of authority actually increases the intensity of involvement of the local sites in the centralised deliberations on the subject at hand: the very need to develop a solution which meets the needs of the sub-units enough to ensure their acceptance of the final result means that the sub-units are actively included in the search for a common solution. The reliance on borrowed authority via delegated responsibility in order to develop a common position which must then be formally accepted by each local works council increases the central body’s need to intensify the degree of participation, and to thus ensure the inclusion of local views, interests, and needs into the process of (voluntary) joint policy formulation.

Of course, the effective right of veto wielded by the local level has its limits: it does not protect a dissenting local works council from being put under immense pressure by other sub-units or the central body itself. Indeed, 36% of the local works councillors surveyed felt that the CWC sometimes put the local works council under immense pressure. Only three CWC members agreed that this was sometimes the case, although 19 CWC members only “somewhat” disagreed that the CWC puts pressure on the local works councils to comply. Implicit log-rolling or the logic of repeated games also play a role: a dissenting works council may be punished for its defection with regard to another, completely separate issue. In this sense, if the logic of a collective response is compelling enough for the CWC to take action, then the defection of one or several local works councils from the deal struck may in the long run backfire on the dissenters themselves.

### **The interface between the CWC and local works councils**

If the key function of the CWC is to coordinate, then this coordination refers not only to interest aggregation with respect to developing joint negotiating positions for explicitly cross-site agreements, but it also means coordinating the work of the local works councils. This is achieved by two routes: firstly via the CWC members themselves, and secondly via the systematic inclusion of local works council members in the work of the CWC. In effect then, local works councils are at the same time constituents of the CWC as well as active participants in the work of the CWC. Rather than simply providing a mandate, they are a party to the work of the CWC. They are directly implicated in the work, of the CWC not just judges of it. This in turn solidifies their role as constituents.

#### *Local Works Councils as Constituents*

The CWC must continuously work to ensure that its activities are seen to be legitimate. In this sense, the local works councils which delegate their Chair and deputy Chair to the CWC are treated as constituents. By virtue of their leadership role at the local level, the members of the CWC have an important role to play in communicating the strategies of the CWC to the local level as well as in securing local support for CWC activities. Yet these local works council chairpersons must each act according to the constraints and opportunities of the local works councils—these ultimate decision-makers are one step removed from the deliberations within the CWC and they have their own expectations of autonomous decision-making authority. Unless they are



offloading an issue judged too thorny to tackle at home, they will tend to jealously guard their own decision-making autonomy.

Obviously, then, the CWC members cannot act alone: they need their works councils to go along with them. *“On the issue of adhering to agreements and what you do with them, the CWC can’t do that, that’s where the local works councils come into it”* (20/3). As another CWC member put it, *“the main task of the CWC is to coordinate all sorts of issues and topics that we’re working on, and to try to reach a common agreement or arrangement. It would be nice, of course, if someone [in the CWC] said, ‘we’ll decide together and then that will be valid for everyone’, but that’s not the way the Works Constitution Act is constructed. That makes it difficult sometimes”* (15/5). Or, as another CWC member put it, *“the main task can only be to set up frameworks and crash barriers, between which the local works councils can implement those topics they have at the local level”* (20/3).

CWC members recognise the need to ensure that their local works council are well-informed about their work at the central level. Within the non-hierarchical system of works councils, it is essential that they have the support of their local works councils in order to underscore the legitimacy of CWC activity.

CWC members accept the need to lobby for the CWC, to work hard to convince their local “constituents”. Some local works councils are marked by strong factionalisation, which makes the advocacy for their CWC members more difficult; where there is a strong internal opposition in place, they need to invest even more effort into convincing the local works council as a whole that the CWC is acting appropriately. Moreover, even if there may be only very limited factionalisation, several works councils are highly politicised, which means that elaborate and wide-ranging discussion must often take place in order to communicate the whys and wherefores of CWC decisions or recommendations.

In one particularly divided local works council, the CWC member relates that *“the CWC is seen as a huge monster that devours the local works council. The minutes of every CWC meeting are picked apart, every agreement that the CWC proposes is hacked apart [...] that’s not in itself bad, but sometimes the point gets completely lost in the process”* (7/8-9).

As another CWC member pointed out, it is essential that enough information is communicated on an ongoing basis if the support of the local works council is to be won. *“I think this is very important, that we inform them continually. Then there’s a different understanding of the CWC, otherwise it turns into this overriding committee [that just] decides something [...] Or you get a backlash, and that’s bad”* (33/12). When asked how much lobby work he had to do, he replied *“well, not so much, because if you always include the*

*background, if you explain why this was settled in this or that way, then you quickly get into a content-based discussion and then you also reach a position quite quickly, where you say, ok, it's this and this...but there's one thing that we don't do here, we don't discuss everything to the last detail, instead we say, 'this and this is on the agenda, the CWC is responsible, what do you think of this issue' and then there's an opinion-forming process and then we know what position or message we're to bring into the CWC" (33/12).*

Another CWC member highlighted the importance of starting discussions very early and of identifying any 'red lines'. *"You need to leave lots of time and space for political discussions. The key challenge for me or my deputy is to decide based on the discussions how far can we go, what is doable, and at what point to we say 'OK, we'll go along with the CWC anyway' and at what point do we say 'no, we won't do that under any circumstances" (26/4).*

Several CWC members pointed out that the reception in the local works council ranges from *"indifferent to highly critical, depending on the issue" (1/7).*

How well the CWC is seen to have resolved an issue also plays a role. *"Criticism of the CWC ranges from saying the result is not uniform enough, or they conceded too much, to those who say that they should've let us [local works councils] have a go, we would've come up with a better agreement" (15/14).* For other issues, the CWC is seen as a lightning rod which enables the local works councils to deflect criticism.

According to several CWC members, the need to enlist the support of the local works councils has increased in recent years. *"It used to be that all the works council had to do was to go out and sell whatever gilt-edged agreement Herbert Lucy made. So works councillors went out among the workforce and took all the credit. [...] But then came the times when the agreements weren't all positive, so the works councillors took credit for all the good bits and blamed the CWC for the bad bits. And suddenly Karl Feuerstein had to make sure that local works council members went out and got support for it, that all local works councils implemented something exactly as it had been agreed [at the CWC] (15/14).*

CWC members are also confronted by high expectations by local works councils.

*"The works council gets so much information from us, it sometimes really tests the limits of what is reasonable, but overall there's a full acceptance, so no criticism. But sometimes I feel like we're going against a wall, the weight of what they expect of us is so great [...] They expect of course that in the central committees we act to further the interests of the site, and they also expect us to push forward issues in the CWC that benefit our site overall" (31/7).*

### *Top-down and bottom up communication*

CWC members recognise that it is difficult to transmit the full scope of their work to the local level. The topics are so detailed and the process of balancing and bringing together so many different points of view and strategic considerations is so complex that it is difficult to ensure comprehensive information.

Several CWC members pointed out that they need to improve the depth and quality of reporting back to the local works councils. *"We need to strengthen our ability to transfer the discussion into the local works council. And the best way to do that is to make sure that the commission members report back to the local works councils, too, not just us. We need to bring all that back into the local committee, make sure it's not kept in the commission (26/3) At the same time, as one CWC member pointed out, "there's so much going on at the local level that it's hard to find the necessary time to report as fully as I'd like about what's going on in the commission" (11/7).*

While it is seen as essential that the commissions thrash out the detail, several respondents also highlighted the problem that the full breadth and depth of the discussions cannot be transmitted back to the local works councils or back up to the CWC. Communication also requires that those who communicate are skilled in doing so: *"the company is so big, the abundance of issues is so great, and so it all has to broken down to the basics [...] to the core issues, people need to have the right feel for that, especially if there was a conflict in the commissions. So that's not always easy" (8/7).*

As the results of the postal survey of local works councillors confirm, CWC members inform their local works councils members comprehensively. The key to ensuring support and cooperation on an ongoing basis, however lies in actively including the local works council members in the work of the CWC. Rather than being passive constituents whose support must be won, individual works councils are made partners in CWC policy formulation. Their acceptance, their impression that CWC activity is appropriate, is won by sharing responsibility.

### *Local works councils as active participants: The integration of local works council members into the work of the CWC*

Next to the systematic formal involvement of the local works councils as constituents in authorising the work of the CWC, the local works councils are firmly and widely embedded into its day-to-day work. The key to ensuring the necessary support for

CWC policies lies in actively including the local works council members in the work of the commissions.

The involvement of local works council members via the committees and project groups is one of the most salient features of the work of the Central Works Council at DaimlerChrysler. According to the CWC secretariat, some 145 local works council members are involved in at least one commission, project group, or task force. Several local works council members are involved in up to nine different commissions.

The extensive participation of local works council members in the work of the CWC serves three key purposes: first, it enables a profuse exchange of information between the local and central level in employee representation as well as among sites; second, it serves to spread the burden of policy development across many shoulders; and third, it systematically brings the interests and specific needs of all the local sites to bear on the collective work of the CWC, thereby anchoring and legitimating the work of the CWC at the local level.

The local works council members who are integrated into the work of the CWC via its issue-based commissions are often the chairpersons of the local works council committees for any given issue. This means that they are experts in the field; they are specialists in, for example workplace organisation or job classifications. As highlighted above, the fact that the commissions and project groups are usually mixed groups made up of both CWC members and local works council members means that the commissions can draw upon both political authority and issue-based expertise. According to the CWC members, the involvement of local experts firmly grounds the commission's work in the practical and political requirements at the local level.

One key benefit for the local works council members is that the work of the CWC is opened up to include more people than just the "top two". In many cases, as many as 10 local works council members from the site are involved in the work of the CWC's commissions.

The effects of this varies according to the size of the local works council. For smaller plants with smaller works councils, this can mean that half of the works local works council is involved in the work of the CWC; in such sites, the work of the CWC is firmly embedded into the day-to-day work of the local works councils. On the other hand, for some of the largest works councils, direct exposure to the ongoing work of the CWC is limited to a relatively small group of works council members. As the CWC member from the largest plant in Sindelfingen pointed out, because of the size of his local works council, only about one in five local works council members is actively

involved in the work of the CWC. *"It's limited to a small circle of specialists. As a rule we send the chairmen of our local sub-committees, so that's only a small circle of about 10 people"* (1/6). Familiarity with the work of the CWC is thus not as widespread as it is in smaller works councils.

#### *Interlinkage between local and CWC levels*

Most CWC members pointed out that the active and direct involvement of local works council members in the work of the CWC contributes to the overall coherence of employee-side interest representation and policy-making across the company. *"A number of our people who are locally in let's say key positions are involved in the CWC commissions. So we have an optimal anchorage and interlinkage between these two levels"* (31/6). *"There's hardly a subcommittee here at the local level which doesn't send a member to the CWC commissions, so the work is very closely interlinked"* (28/4). *"If we have some issue in the CWC then it's just good sense to discuss it with our colleagues here in the plant together with the local committee, so to collect feedback and opinions from all different levels and to hold discussions, and we involve the local works council very closely into these discussions so that way we have a much stronger content-based interlinkage between the issues we're dealing with at the local level on the one hand and at the level of the CWC on the other"* (31/7).

#### *Local works council members as CWC ambassadors*

The local works council members serving on the committees act in effect as ambassadors of the CWC to the local level. They help to transport issues back to the local level, and also to garner support for the CWC's policies. As one CWC member put it, the involvement of so many employee representatives from the local level *"helps to anchor the CWC much wider and deeper into the work of the works councils across the country"* (30/8). For another CWC member, the very legitimacy of the CWC's work derives from the working links between the CWC and the local works councils (Interview notes). *"It's important that they're well informed, that we basically don't keep anything related to the CWC from them, but that we report openly instead, and openly reflect the discussions in the CWC and that way make clear why certain decisions were made in the CWC. Everybody who's involved in the CWC commissions does that so we don't have any problems in that department"* (32/7-8)

Some CWC members have quite consciously distributed the opportunity to participate in the CWC commissions across many shoulders in their local works councils. *"We make a point out of the fact that it's not just the works council chair and the deputy-chair who*

*are in commissions, we're only in one commission each, but that we have regular works council members in nearly all the other commissions (26/3). Another CWC member pointed out that "for a lot of works council members it's a bit of an honour for them to go to the CWC, firstly it's far away, you can make a real contribution [...] they're not in awe or anything, but they get to go there and meet other people, and it's all top-level stuff, and it's great to be taken into account" (33/13).*

The close involvement of local works council members in the work of the CWC thus serves to build political support for the work of the CWC. As one CWC member pointed out, having local works council members involved in the work of the CWC *"gives them other avenues of communication, of understanding just what it is that we do in the CWC, than if the information were just going through the bottleneck of my report or the report of my deputy, even at the risk that the message may not be uniform" (8/9).*

The involvement of local works council members fosters understanding for the work of the CWC: *"so many local works council members take on responsibilities at the CWC [...] and as soon as someone takes on a role in the CWC then their opinion changes, because then it's all his responsibility too" (16/8).* This assessment is confirmed by the results of the postal survey: members of commissions were markedly more likely to view the work of the CWC more favourably than were non-members. This effect is perhaps seen most starkly in the question about the role of the CWC: Overall, 69% of respondents felt that rather than limiting its activity to those issues which could only be dealt with at a central level, the CWC should take on a more active role in distilling common concerns and in cultivating overall collective responsibility for common issues. While local works councillors who were not involved in the work of the CWC commissions were just under twice as likely to support an expansive role for the CWC, those who are involved in commission work were over three times as likely to support such an expansive role (See also Figures 28 and 29).

### **Interlocking structures of activity and communication: sources and exchange of information**

The CWC members also value the cross-cutting channels of information via the commissions as a crucial additional source of information about activities and strategies in other sites. *"I get valuable feedback and new ideas, and so do my local works council members in the commissions, on what's going on at other sites, on what possibilities there are to deal with certain issues" (2/7).* One CWC member pointed out that the report from the CWC and the work of the various commissions has been a standard point on the agenda at local works council meetings for over 20 years. *"It's so important that*

*people know what is going on at other sites, how they deal with problems we have in common” (29/3).*

As another CWC member put it, *“What’s also a very important part of this process is mutual information processes, what’s happening regarding the different issues within the different plants, such as fixed term work contracts and temporary workers, so that we can see what developments are taking place in the individual plants and how we might be able to coordinate our responses and approaches [...] I don’t think this level of information exchange and mutual advice would function without the commissions and working groups, because the sheer scope of information and detail is too large”* for the CWC as a whole or the Secretariat to transmit (30/8). Another CWC member stressed that that it is important that there is a sense of duty to communicate what is actually going on in the different plants (29/6).

The exchange of information extends to pooling the results of their work, *“even really easy things, like exchanging texts for flyers or speeches on issues that we have in common. I’m happy to share our work, and I’d like to benefit from others’ work. There’s no need to reinvent the wheel”* (29/5).

It is important to note that the commissions are not only important sources of information for the local works councils, but for the CWC members themselves as well. As one CWC member from the north pointed out, *“When they do something new and innovative down south, they don’t always remember to tell us about it[...] We’re much better informed now through the work of the commissions, it works very smoothly* (29/5).

This network of local works council members is also valued as a source of more, better, and faster information about what is going on at other sites (2/6). It also gives rise to wider personal networks. One CWC member who chairs a commission pointed out that through his work on the commission, he has his own contacts into every site which he can rely upon in addition to his contact to the Chairs of every plant.

Another CWC member who is not himself a member of a certain commissions remarked, *“I get all the information I need about the commission from my local members, they reflect back to me what the state of play is, and then we discuss how we should position ourselves and what can we contribute and then it all goes via that route. It’s much better than if I had to be the one in all the commissions”* (9/2). As another CWC member put it, *“if anyone is concerned about not being in the loop if they’re not members themselves, then they have a problem at home, not in the CWC. They need to make sure that the loop is intact, that their site representative reports back”* (32/3).

## Living with asymmetry

Several CWC members point out that when it comes to implementing the work of the CWC, for example in implementing a local agreement along lines agreed at the central level, it becomes clear that the reflux to the local level is quite uneven. For some this is due to the sheer complexity of the issues involved. *"The level of discussions and reporting back varies. That's a weak point, that what the CWC decides politically can't really be fathomed at the local level anymore, for example our discussions about working time, or performance evaluation. When I meet colleagues from other works councils, I realise how uneven the state of their knowledge is"* (26/3). In the words of another CWC member, *"There are recurring problems of implementation, because the knowledge about the background to these agreements is not sufficiently clear at the local level"* (9/2). Others suggest that there are simply different preferences at the local level, and that these different preferences are reflected in the chairmanships of the various committees. Pointing out that the actual political implementation of CWC agreements varies from site to site, one CWC member commented that *"agreements are always filled with more life in the site where the commission chair who negotiated it calls the shots. Certain topics are firmly anchored in one site, another topic is anchored somewhere else, and that's usually where the local representatives or the CWC members carried the most responsibility within the commission. That's probably unavoidable, but it shows how hard it is to communicate. An agreement is not the same agreement everywhere even if it's the same text. One needs to have the courage to put it into perspective"* (11/7-8).

## Transparency

CWC members are well aware that opening up their working structures to include other colleagues means that they relinquish some control over the agenda, over who has access to which information. Several CWC members pointed out that this far-flung network of local works council involvement also serves to foster transparency. For example, as one respondent pointed out, local works council members are no longer solely dependent on their local Chair or Deputy Chair who are members of the CWC, but that they could also get information from other members of their local works council who were involved in the work of other commissions (3/3). The fact that many local works councillors maintain contact with their colleagues at other sites is borne out by the postal survey results (see Figure 15). As another CWC member pointed out, *"Since some of my local works council members are also active in the commissions, they have a different access to the work of the CWC, so they do scrutinise more critically"* (6/11). Indeed, as another CWC member noted, *"The network of committees is a very fine one, it also means that you'll never be able to completely cover up anything that you've done at the CWC or back*



*home [...] because of all the friendships and informal contacts among local works council members from different sites [...] No local works council Chair can ever be certain that a local works council member will hold his tongue (31/9).*

This extensive involvement of local works council members into the work of the CWC may in part also have been reinforced by the explicitly participation-oriented approach to trade union policy in the workplace known as *beteiligungsorientierte gewerkschaftliche Betriebspolitik*. This approach, which sought to extend democratic principles to all aspects of daily life, had been developed by the German trade union movement since the late 1960s in response to what was increasingly decried as elitist proxy politics (*Stellvertreterpolitik*) on the part of works council leadership. It was in the unions' education activities that this approach took the strongest root: by the mid 1980s, this participative/democratic approach, which stressed both the need to actively seek the involvement of the workforce at large as well to communicate extensively within the works council itself, was firmly integrated into the entire range of trade union education provided for works council members and shop stewards.

It was seen in Section 5.1 that nearly all CWC members had had extensive training in employee representation provided by IG Metall. 99% of the local works council members surveyed had also participated in training seminars. It is thus quite likely that these developments at DaimlerChrysler were also supported by this ethos of participation-oriented internal democracy.

## **5.7. The allocation of authority in practice: who has the last word?**

The institutional design of the federal system of interlocking interest representation at DaimlerChrysler, in particular the clear primacy of the local level, goes a long way towards ensuring that no level enjoys a monopoly on decision-making power. Issues are effectively channelled through the system, thereby ensuring that regardless of the final formal outcome, everyone has been able to have his or her say.

At the same time, it is instructive to investigate which level – the local level or the central level – is perceived to have “the last word” in matters of policy or strategy. In other words, who calls the tune? In the postal survey, local works council members were asked to assess which level was decisive in determining the underlying policy behind employee representation. Respondents were asked to rank the following

committees in the order of their importance in determining the actual policy or strategy of employee representation: local works council, the committees of the central works council, the central works council itself, the group works council, the European Works Council, and the Supervisory Board.

The members of the Central Works Council were also asked to rank the various committees. There is one important difference between the two data sets, however: the list of committees which the CWC members were asked to rank in order of their importance included the executive committee of the CWC, i.e., the Central Works Committee, rather than the commissions of the CWC. It emerged early on in the course of the interviews with the CWC members that this official executive committee was, in fact, defunct -- indeed, five CWC members did not include the central (executive) committee in their ranking, saying that it did not exist (see Section 5.4). In order to ensure the internal comparability of the data among the CWC members' responses, this question was retained. In the postal survey of local works council members, however, the central works committee was replaced with the commissions of the CWC.

The results of this ranking exercise present an illuminating picture of employee representatives' perception of the role played by the different levels in determining the actual policy of interest representation.

### **The most overarching levels have the least influence**

For both the "ordinary" local works council members and the CWC members, both the European Works Council and the Group Works Council (both of which cover all of DaimlerChrysler's operations in all product divisions, not just the automotive sector), ranked low in terms of their influence on overall policy determination. 83% of local works council members surveyed and 90% of CWC members ranked the Group Works Council at 4th or 5th place. As for the European Works Council, both groups of respondents clearly placed it at the lower end of the spectrum: 95% of local works council members and all of the CWC members placed it at 5th or 6th place. (Of these, 62% of local works council members and 69% of CWC members put the EWC last.)

As for the Supervisory Board, half of which is made up of internal or external (trade union) employee representatives, 79% of the local works council members surveyed spread its influence evenly over the 4th, 5th and 6th places. By contrast, 76% of CWC members ranked the Supervisory Board at 3rd or 4th place, suggesting that in their experience, some key issues related to IR at the company level are actually settled in

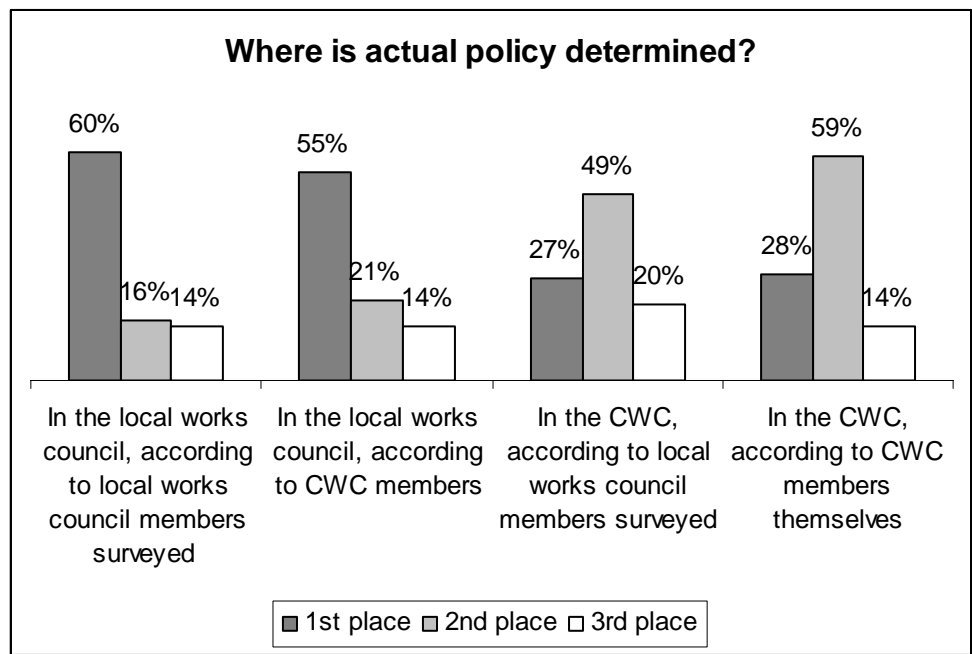
the context of the Supervisory Board, rather than within the multi-tiered system of works councils.

*Primacy of the local level, supporting role of the CWC*

A similarly clear pattern emerged with respect to the influence of the local works councils on the one hand and the Central Works Council on the other.

Figure 23 illustrates quite clearly that for a majority of respondents, the local works councils rank first before the Central Works Council. For 60% of local works council members surveyed, local works councils play the most important role in the determination of policy and strategy in employee representation across the company. 55% of the CWC members also stated that the local level is the most important strategic locus. The Central Works Council clearly ranks second in importance from the point of view of both the local works council members as well as the CWC members themselves: 49% of local works council members and 59% of CWC members ranked the Central Works Council as the second most important committee in policy determination. The operative or executive level of policy determination ranks third for both groups: 38% of the CWC members ranked the Central Works (executive) Committee at third place, while 48% of local works council members ranked the operative level of the CWC commissions clearly at third place.

**Figure 23: Who calls the tune? The determination of policy**



These results can be interpreted to mean that while the local works councils play the definitive role in determining actual policy, the CWC also plays a very important role. For 27% of local works council members, and for 28% of CWC members, the CWC even ranked 1st in terms of its importance in defining overall strategy and policy. The clear alignment of the commissions at third place (48%) or even at second place (30%) suggests that the commissions are seen to play a crucial role in developing policy and strategy, but that the final decisions and thus the final responsibility lies with the local works councils or in the CWC.

In comparison with the other committees, whose ranking was fairly consistent, the ranking of the local works council is a bit erratic. For 60% of the survey respondents the local works council ranked first; nearly one third ranked it at second (16%) or third (14%) place. However, for a minority of respondents, the local works councils play a negligible role in the actual determination of policy. For 5% of the local works council members and 7% (2 members) of the CWC, local works councils ranked fourth, and 2% of the local works council members surveyed and one member of the CWC ranked it at fifth place. Finally, 3% of the local works council members but none of the CWC members ranked the local works council as least important at 6<sup>th</sup> place.

In contrast, not a single local works council member ranked the CWC at lower than 4<sup>th</sup> place. A full 97% of local works council members and all of the CWC members ranked the CWC at first, second or third place. This consistently high ranking of the Central Works Council may be the result of a bias induced by the survey itself, which was clearly focussed on the CWC. At the same time, it could also mean that for some respondents, the actual influence of the single local works council pales against the collective impact of the very active CWC.

### **The representation of sites in the CWC**

The different plants at DaimlerChrysler vary greatly in size, from the smallest factory in Hamburg with its ca. 2,000 employees to the giant plant in Sindelfingen which employs over 36,000 people. Each site delegates two members to the CWC; in the case of a vote, each CWC member has as many votes as employees at the plant from which he or she is delegated. Next to the plants, there are of course the R&D sites and the Sales and Service establishments; the latter are grouped into five districts which each delegate a representatives to the CWC.

In the postal survey, the local works council members from the plants were asked to assess whether the different sites were appropriately represented within the CWC. The members of the CWC were asked the same questions. Here, the points of view of both the constituents (the local works councils) as well as their representatives (the CWC members) were broadly consistent with one another.

82% of local works council members indicated that they perceive that the different sites are appropriately represented in the CWC. All but one of the CWC members felt this to be the case, demonstrating a high degree of faith in the basic institutional structure of site-by-site representation within the CWC as well as in the system of weighted majority voting. This does not mean, however, that the works councillors feel that their needs are always taken enough into account: 37% of local works council members and six out of twenty-nine CWC members felt that the needs of their site were not always sufficiently taken into account in the CWC.

From the point of view of just over half of the local works council members, the CWC often decides in the interests of the largest sites. In contrast, less than a third of the CWC members shared this view. As can be expected, this perception was prevalent among the respondents from smaller sites, but even representatives from larger plants recognised that they enjoyed a privileged position within the CWC. In particular, 38% of respondents from the second largest plant at Untertürkheim also agreed that the CWC tended to act more in the interests of the largest sites.

### **The CWC and the local works councils**

As mentioned above, the actual policy and strategy of employee representatives is fixed within the contested arena of competing and sometimes overlapping competences of the local works councils and the central works council. A range of questions in the postal survey aimed to capture the local works councillors' perception of this contested arena. Here, the perceptions of the local works council members and the CWC members differ widely.

For the majority of local works council members, the distribution of decision-making competences seems to be fairly balanced. A closer look at the minority opinion however, allows a more focussed view: According to 44% of local works council members, the CWC pulls too much decision-making authority upwards at the expense of the local works councils' autonomy. By contrast, only a single CWC member tended towards this assessment of the CWC as an authoritarian, overbearing central body. At the same time, a large majority of the CWC, 79%, only somewhat disagreed that the

CWC tended to pull decisions upwards, while only five CWC members disagreed with this statement outright. This indicates that there is at least widespread sensitivity towards the danger that the CWC might overstep its boundaries.

It has been noted that the local works councils are free to mandate the CWC to deal with an issue on its behalf; some local works council members I spoke with voiced the opinion that some local works councils tended to simply offload issues that they were too weak to settle at the local level. This view is shared by 26% of local works council members. However, only five CWC members somewhat agreed with this statement that local works councils for their part delegate too much decision-making authority to the CWC, while the remaining 24 CWC members did not feel that the CWC is burdened with too many issues that the local works councils should solve on their own. Here, too, though, 69% of the CWC members only “somewhat” disagreed with this assertion, thus suggesting that they recognise that the temptation may at times be high for a local works council under pressure to try to duck an issue by delegating it to the CWC.

### **5.8. The challenge of dual allegiance**

Institutional frameworks which define the allocation of authority are not sufficient unto themselves. The whole system must be underpinned by political support and the desire to coordinate activities. According to Føllesdal, however, “many authors note that the challenges of stability must be addressed not only by institutional design, but also by ensuring that citizens have an ‘overarching loyalty’ to the federation as a whole in addition to loyalty to their own sub-unit (Franck 1968; Linz 1997). Norman (1995) and Choudhry (2001) have explored the political philosophies of federalism; central topics here are the legitimate bases, content and divisions of such a public dual allegiance.

Føllesdal points out that “the appropriate consideration that voters and their sub-unit politicians should give to the interests of others in the federation in interlocking arrangements must be clarified if the notion of citizen of two commonwealths is to be coherent and durable” (2003).

This statement touches upon a core theme of this study: how does cross-site interest aggregation take place? To what extent are local interests brought to bear on central strategy formulation? How is a common overarching interest identified or developed in the light of possibly diverging local interests? How much differentiation is sustainable before it leads to fragmentation? The members of the CWC are acutely

aware of this dilemma of dual allegiance: they refer to it as being in a quandary, or a catch-22 situation. Yet they also demonstrate a high degree of tolerance for ambiguity.

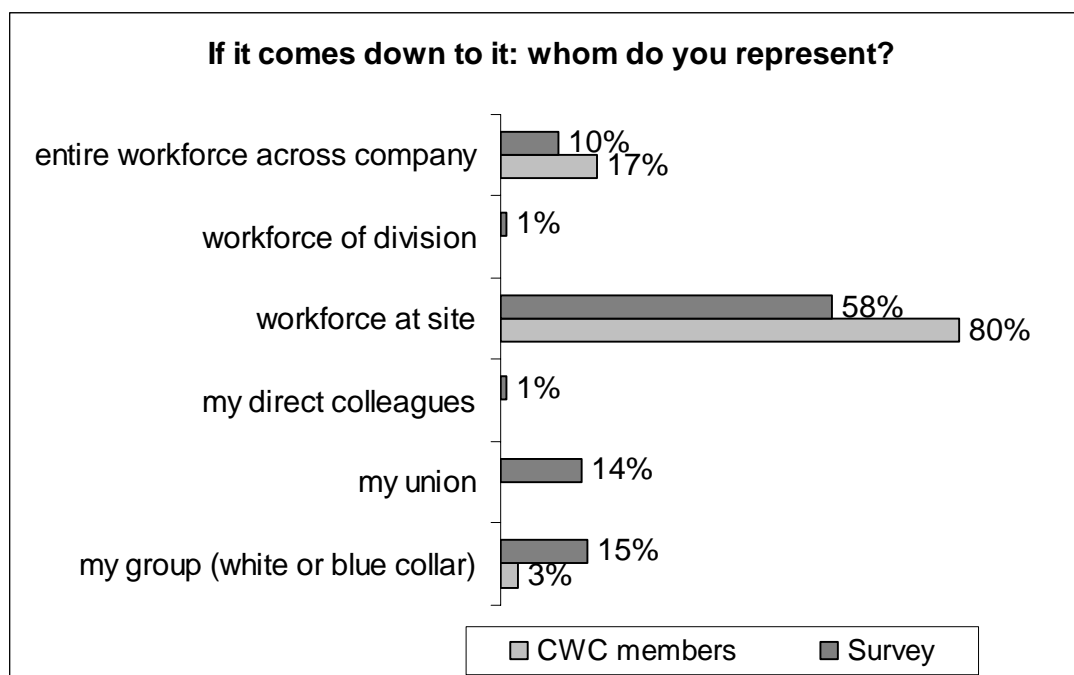
The survey data reveals that the local works council members, i.e., those who are in Føllesdal's terms "the voters and sub-unit politicians" are also quite comfortable with the notion of dual allegiance. On the one hand, it is their understanding that they are primarily responsible for their own local level, yet they appreciate the role and the necessity for CWC activity, they expect it to take an active role in curtailing excessive cross-site differentiation, expect it to sort things out.

### **Allegiance to the local level**

The *BetrVG* takes as its starting point the autonomy of the local works council; works councils are elected locally and they are committed to their local constituency. Within the local works councils, a range of different groups are represented, whose interests are not always reconcilable. Several questions in the postal questionnaire aimed at precisely this riddle. The local works councillors were asked to whom they feel the most obliged, if it comes down to having to decide between different interests or points of view. This is admittedly a very difficult question to answer. Five respondents failed to answer this question, but the fact that nearly 98% of all respondents did manage to answer this question testifies to the strength of the works council members' awareness of their own role.

The results shown in Figure 24 testify to a firmly rooted understanding that the local works council is meant to defend the interests of the local site in its entirety. 58% of local works council members put the interests of the entire workforce at the local site first; in other words, they see themselves as equally accountable to all employees at the site, regardless of whether they are white- or blue-collar, or whether they are union members, for example. Roughly one third of the works councillors saw their ultimate responsibility more differentially: for example in defending the interests of the white-collar or blue-collar employees (15%), or the interests of the members of their union (14%). 10% felt that their overriding commitment was due the entire workforce of the whole company, and 1% each felt that they were in the works council in order to represent the interests of their department or the employees of their divisions (i.e., automotive as opposed to commercial vehicles).

**Figure 24: Allegiance to the local level**



The CWC members have a similarly rooted understanding of their primary role as representatives of their site within the CWC. A full 80% indicated that their primary loyalty and responsibility lies with the site which delegated them to the CWC. 17% felt themselves above all beholden to the entire workforce of the company, while one CWC member felt that his primary responsibility was to the minority of white collar workers within the company. At the local level, 14% of the local works council members felt that if it came down to it, it was their responsibility to represent the interests of the union members.

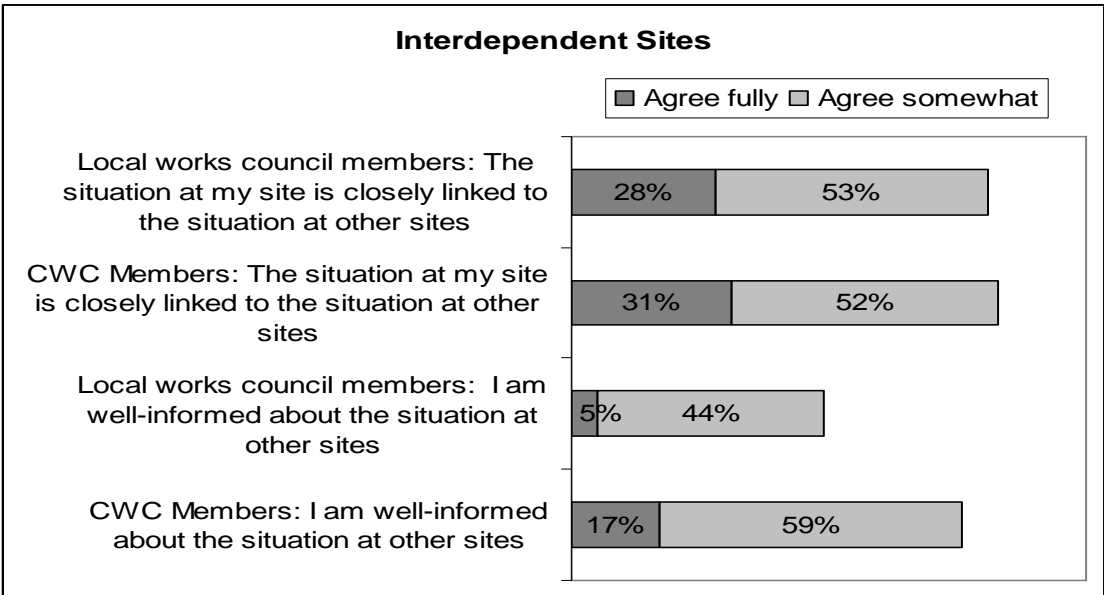
Figure 28 compares the responses of the “ordinary” local works council members and the CWC members. For 58% of the local works council members, their overall responsibility within the works council is due all employees at that site: the works council is a collective speaker and actor on behalf of the entire local workforce. Similarly, given that CWC members are as a rule Chair or Deputy Chair of the local works council, it should come as no surprise that even more (80%) accord their primary commitment to the local level. They have been elected to a leadership position within the local works council, and delegated to represent the interests of the site within the CWC within a federal system which aims to unify disparate bits and pieces. But it goes beyond this: it is clear that within the minds of the local works council members at all levels, it is the local site which matters.



At the same time, there is an acute awareness among local works council members that the different plants within DaimlerChrysler are highly dependent on one another, either through intricate production alliances, parallel production structures, or simply through their contribution to the overall economic situation of the company as a whole. A large majority (81%) agreed that the situation in their particular site is closely linked to the situation in other sites. Despite their regular contacts to other sites, however, only 49% indicated that they were well informed about developments at other sites.

As can be seen in Figure 25 below, the awareness of the interdependent relationship between the sites is consistently widespread both among non-CWC members and CWC members alike: 83% of CWC members compared with 81% of local works council members agreed with the statement that the situation at their site is closely linked to the situation at other sites. Not surprisingly, members of the CWC feel that they are better informed about the situation at other sites than are the local works council members. 76% felt that they were well-informed about the situation at other sites. Here too, a glance at the minority opinion is illuminating: even though they receive regular information about the situation at other sites in the context of the work on the CWC and its commissions, nearly a quarter of the CWC members did not feel well-informed. This is another reflection of the ever-present ambiguities of the work of the CWC: the members of the CWC are well aware of the fact that that not everybody – including themselves – reports everything all the time.

**Figure 25: Interdependent sites**



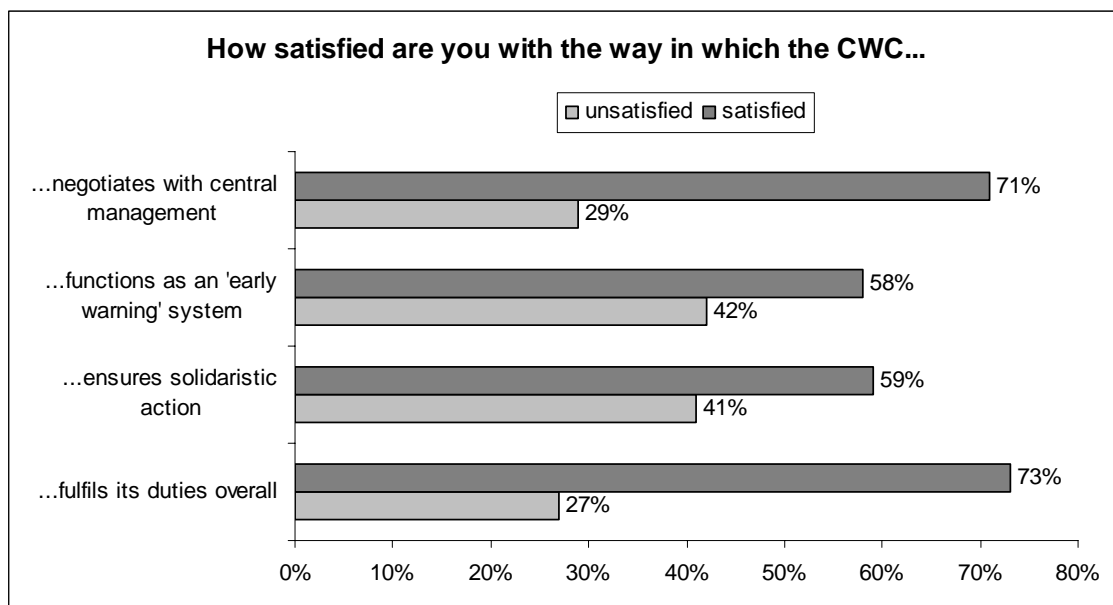
## Local Works Council members have high expectations of the CWC

In the postal questionnaire, local works council members were asked to indicate their satisfaction or dissatisfaction with a range of specific aspects of the CWC's work. These responses not only allow an assessment of the CWC's ability to meet the expectations of its constituents, but it also allows us to identify just what those expectations might be.

The first set of aspects (Figure 26) is related to general aspects of the CWC's work, while the second set (Figure 27) refers to the need to reconcile different interests and needs of the very different sites.

The local works councillors are by and large satisfied with the way in which the CWC fulfils its overall responsibilities. If one looks closely at the second set of more differentiated, site-specific issues, in particular with respect to the need to weigh and reconcile at times conflicting interests, then the opinions of the respondents are more divided. Respondents were asked to choose from among a range of assessments, from "very satisfied", "somewhat satisfied", "somewhat unsatisfied", to "very unsatisfied". In order to sharpen our view of the positive and negative assessments, the results have here been collapsed into two categories "satisfied" and "unsatisfied".

**Figure 26: Local works council members' assessment of the overall performance of the CWC**



71% of local works council members were satisfied with the way in which the CWC conducted negotiations on their behalf with central management. 58% of the works council members valued the CWC as an „early warning system“ about changes across the company, but the fact that 42% did not feel that the CWC gave enough prior warning suggests that they see a more important role for the CWC in ensuring that the local level has more and earlier information about upcoming changes in other parts of the company that might affect their site.

59% of the local works council members surveyed were satisfied with the way in which the CWC ensures a solidaristic approach. But only slightly less than 13% were actually „very satisfied“ with this. However, out of the 41% who were not satisfied with the role played by the CWC in ensuring adherence to the principle of solidarity, less than 8% were actually “very unsatisfied”. Overall, 73% were satisfied with the way in which the CWC performs its duties in general. More precisely, just over half of the respondents (53%) were “somewhat satisfied” and 17% were “very satisfied”. Only three respondents, or 2% of all respondents, were „very unsatisfied“ with the overall performance of the CWC.

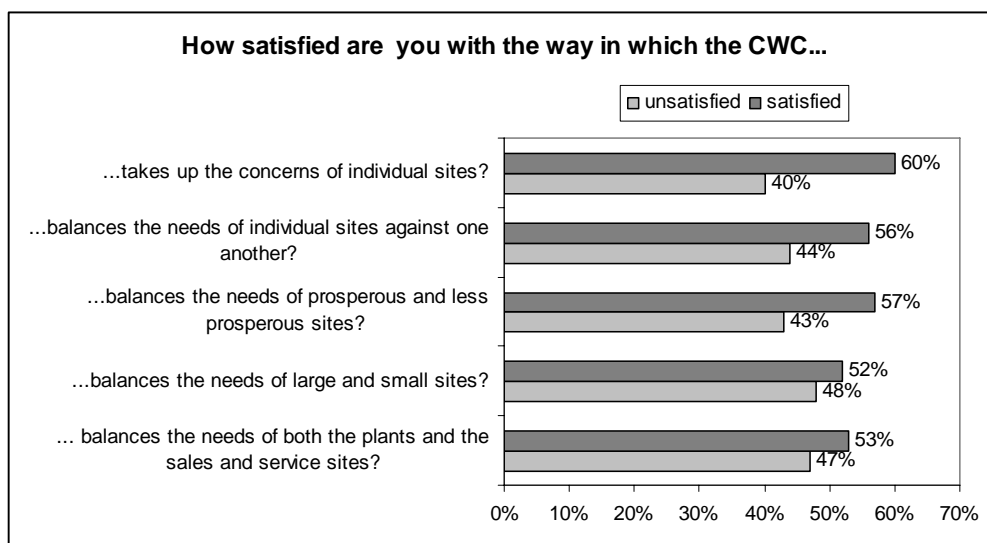
### **Interest aggregation in the CWC**

A range of statements in the postal questionnaire focussed on the necessary weighing and aggregation of possibly diverging interests. The response pattern here was fairly divided. The majority of respondents were satisfied, but the size of this majority is decidedly smaller than in the assessment of the CWC’s work overall discussed above. The response behaviour also suggests that the questions about weighing various interests in the CWC were especially difficult to answer. While nearly any other questions in the questionnaire which were left unanswered were only declined by one to two respondents at most, between six and seven respondents (about 3% of all respondents) chose not to answer these questions about interest prioritisation within the CWC.

About 60% of respondents were satisfied with the way in which the CWC takes the needs and concerns of the different sites into account. But only 6% were “very satisfied”. Only 56% of respondents were happy with the way the CWC actually balances the concerns of the different sites against one another; the proportion of those who were “very satisfied” was only 5%. Asked whether the CWC successfully balances the interests of prosperous sites with struggling sites, 52% were satisfied, and of these, 7% were “very satisfied”. Only about 52% were satisfied with the success of the CWC in balancing the concerns of large and small sites against one another.

The postal survey only covered works council members from the plants; next to the works councillors in the factory there are nearly as many works council members spread across the 41 Sales and Service sites. 53% of the works council members from the plants felt that the CWC successfully managed to balance the concerns of the Sales and Service establishments against those of the plants. However, the fact that a strikingly high number of respondents (23, or nearly 11% of all respondents) left this question unanswered suggests that many did not feel themselves to be in a position to answer this question in the first place. Furthermore, the fact that 90% of the responses concentrated on the weaker answers „somewhat satisfied“ and „somewhat unsatisfied“ underscores the apparent unease of respondents in answering questions about the Sales and Service establishments. Apparently, an awareness of the situation in the sales and services division is not firmly anchored in the CWC.

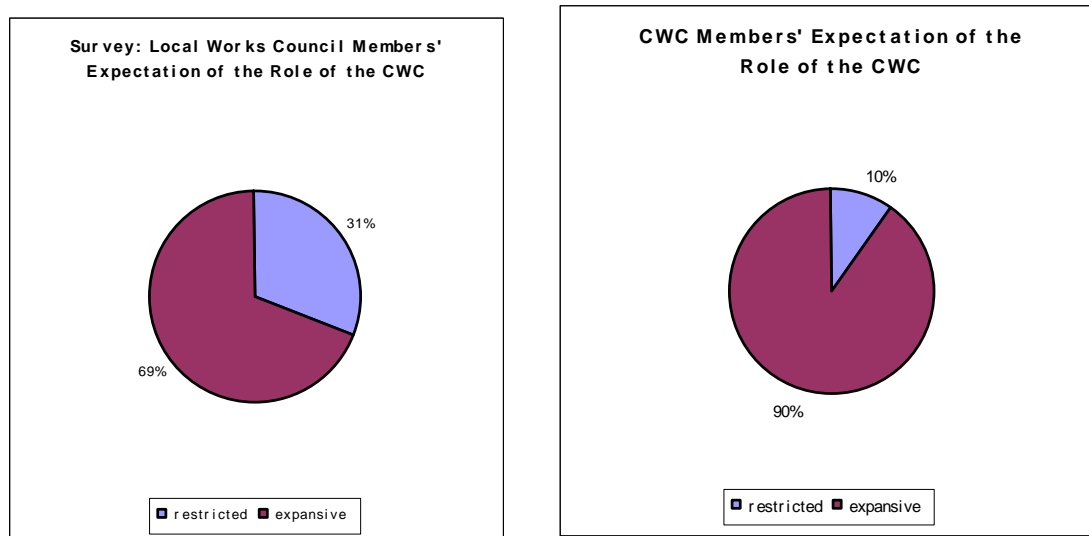
**Figure 27: Interest aggregation and balance in the CWC: Local works council members' assessment**



### Not a paradox: dual allegiance

Local works council members and CWC members were asked to define their ultimate expectation about the role of the CWC. 69% of the local works council members and 90% of the CWC members agreed with the statement that „the CWC should take on a more active role in distilling common concerns and in cultivating overall responsibility for common issues.“ A minority of 31% of the local works council members surveyed and 10% (or only 3 members) of the CWC felt that its activity should be „exclusively limited to such issues which must be uniformly regulated across the company“.

**Figure 28: Dual allegiance I**



**Expansive:** “The CWC should take on a more active role in distilling common concerns and in cultivating overall responsibility for common issues

**Restricted:** “The activities of the CWC should be exclusively limited to such issues which must be uniformly regulated across the company”

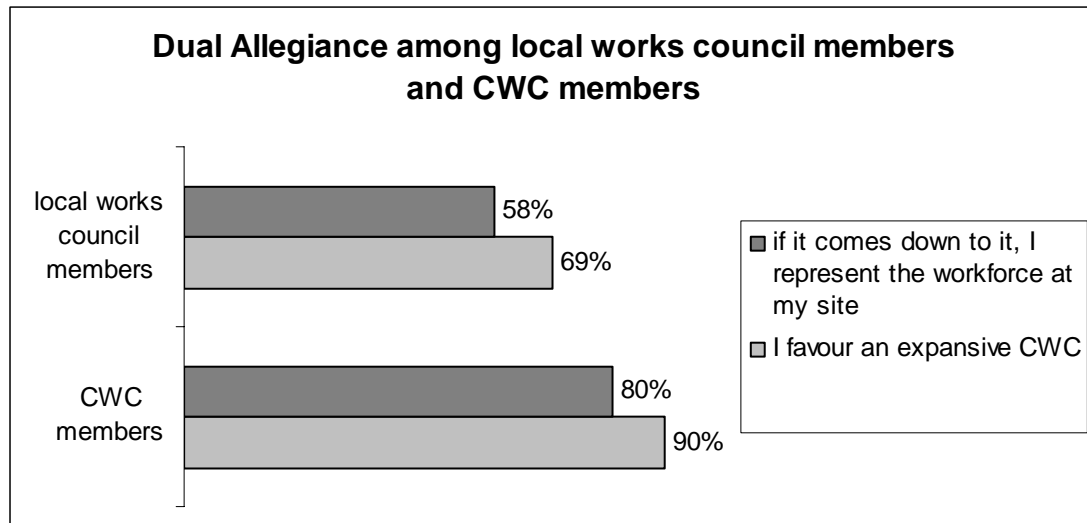
Both local works council members and CWC members made a point of commenting that a decision for one or the other alternative could only be made on a case by case basis. That this question was clearly difficult to answer can be seen in the fact that 5% of respondents (11 works councillors) declined to answer this sensitive question at all.

Indeed, because the question was formulated in a rather rigid “either/or” form, the question was designed to do no more than sound out the works councillors’ fundamental understanding of the ideal role of the CWC.

It was shown above that the works council members, whether or not they are members of the CWC, see their primary responsibility as being towards the workforce of their particular site. It has also been seen that the local works council members and the CWC members have high expectations of the CWC.

If we put these two issues (local commitment and high expectations of the CWC) side by side, the following picture emerges:

**Figure 29: Dual allegiance II**



What at first glance might seem contradictory actually illustrates the phenomenon of “dual allegiance”; it is a pronounced confidence in the „federal“ system of cross-site interest representation. On the one hand, the works councillors’ own priority commitment lies clearly with their local site or groups within their local site. On the other hand, there is a widely held acceptance of an overriding responsibility and competence of the CWC in the interests of all sites: the figure above illustrates the high degree of acceptance or expectation that “the CWC should play a more active role in the development of common concerns and in fostering collective responsibility and action.” The works councillors clearly recognise that their localised authority to make decisions requires a certain degree of coordination across sites. They are willing to submit to this coordination: in this sense there is an allegiance, an insight into the necessity of central coordination. Put differently, they count on the interplay between at times overlapping or unclear competences in order to ensure that their policies and strategies are in the interests of all sites, despite the complexity and uncertainties which arise out of this iterative policy-making.

### **Enabling solidarity in the Central Works Council at DaimlerChrysler**

It can be concluded that the employee interest representation at DaimlerChrysler rests on a solid foundation of shared expectations and roles. The picture which emerges overall is that of a functioning system which balances and, where necessary, reconciles diverse interests within the sometimes contested arena of works council activity at all levels.

By way of conclusion, the following section will discuss the ways in which the central works council at DaimlerChrysler fulfils the prerequisites for the generation and maintenance of solidarity which were developed in Chapter Three.

As the description and analysis of the workings of the DaimlerChrysler CWC, and in particular of its substructure, demonstrate, **wide-ranging opportunities for participation** are clearly available. The CWC's internal debate about its own structures was driven by -- and ultimately decided by -- a recognition of the fundamental necessity of ensuring the inclusion and representation of all sites in the decision-making processes of the CWC. Furthermore, in the words of the CWC members themselves, and as confirmed by the survey results, the inclusion of the local works council members in the operative work of the CWC increases the identification of individual works council members with the CWC, thereby providing a basis for the **stabilisation or regeneration of a normative foundation for collective activities**. It was also demonstrated that the CWC's 'substructure' not only provides open channels of information and exchange upwards and downwards, but that it amounts to an intricate network of cross-cutting contacts spanning the entire multi-level system. Taken together, these discursive and participative elements are the keystone to the internal social cohesion (i.e., community solidarity) which was seen to be an essential condition for effective action outwards vis-à-vis the employer (i.e. combative solidarity) at both the local and central levels.

It was argued that participative elements must be able to **strengthen the capacity of a compromise, once reached, to command commitment**. The 'iterative delegation' approach adopted by the CWC, in which the ongoing deliberations in the commissions are regularly discussed in the CWC, ensures that the final outcome is likely to find approval in the CWC – and by extension in the local works councils. The fact that the members of the CWC are themselves in leadership positions at the local level is only part of the potential capacity of the CWC to command commitment; after all, their leadership position will not automatically suffice to ensure that the local works council will comply with the CWC's approach. That local works council members are closely involved in the work of the CWC and thus share responsibility for its outcomes was seen to play a crucial role in ensuring that the local works councils will adhere to commitments made as a result of a negotiated solution or compromise.

Although the wide range and complexity of the issues dealt with in the CWC often made it difficult to communicate their full scope, CWC members were well aware of the need to ensure the **transparency of their decision-making processes**. The availability of information and opportunities to participate were found to enhance trust in the CWC. The **density of interaction among CWC members and local works**

**council members**, which was achieved not only through the CWC's committees but also by means of its approach of 'iterative delegation', also supported this culture of transparency, legitimacy and interdependence.

The recognition that **power asymmetries must be dealt with responsibly** is widely shared, and was perhaps most clearly seen in the debate within the CWC about setting up a "Preparation and Coordination Committee". The representatives of the stronger and more influential sites demonstrated their willingness to take a step back, even though they would clearly have benefited from alternate arrangements. The overriding priority assigned to the principles of representativeness and inclusion, and the frequency with which key tasks are delegated to others, are further evidence of the willingness of more powerful sites to be bound into egalitarian structures and processes.

The acute awareness of the interdependence of sites, and in particular the implicit understanding that nearly all local issues have potential implications elsewhere, underpins the density of interaction and informs collective decision-making processes within the CWC. These ongoing processes serve to secure implicit and explicit agreement about how to deal with conflictual situations if and when they arise, thereby **offering a preventive solution to the fundamental dilemma of solidarity** that the greater the divisive pressure from outside to increase competition among those who strive to generate solidarity with one another, the more difficult it is to achieve solidarity.

Finally, the consensus among CWC members about the purpose of the CWC, and the evidence that these perceptions are shared at the local level as well, suggest that the **CWC successfully supports the generation of shared values and morals**. The trust in these shared values can perhaps most clearly be seen in the CWC members' marked tolerance for ambiguity: CWC members are well aware that they are not privy to everything that goes on elsewhere, but they know that such 'skeletons in the closet' will not be allowed to become the pivot on which coercive comparisons rest. The moral dimension of 'traditional' solidarity, the vision and idealism behind their work, are clearly shared by the members of the CWC and, perhaps more importantly, by the local works council members. The paradox of 'dual allegiance' is explained by these shared morals: while each works council is ultimately accountable to his or her local workforce, there is a widespread recognition of the need to accept compromises in support of other sites. The perception of the role of the CWC is informed by more than a pragmatic, even utilitarian recognition that 'what goes around, comes around'; the moral force of the works councillors' conviction that each representative bears specific responsibility within the larger context is compelling.



## Chapter Six: Implications for EWCs

Chapter Three explored the ways in which the key tenets of federalist theory and democratic theory can be applied to multi-level systems of workplace employee participation. Using the institutional framework laid out in the German *Betriebsverfassungsgesetz* it was demonstrated that the German system of workplace codetermination clearly amounts to a federal political order. At the same time, no generalised conclusions about actual practice are possible. The ways in which these frameworks are filled out varies widely across German companies according to the preferences and priorities of the actors involved. The case study of DaimlerChrysler examined a particularly integrative CWC in order better to identify lessons to be learned for EWCs

This chapter compares the rules and practices of German Central Works Councils and European Works Councils, drawing upon the key analytical points laid out in Chapter Three. The first question discussed is thus the extent to which EWCs can be viewed as a simple addition of an additional layer to the multi-level, federalist framework of company-based employee representation. The chapter will begin with a constitutional comparison of the CWC and EWCs as they are laid out both in the subsidiary requirements of the EWCD and in the wide-ranging sets of EWC agreements which have been analysed.

However, as noted in Chapter Three, the application of the federalist constitutional language is only a means to an end: it enables us to grasp the ways in which centralised institutions of employee interest representation reconcile unity with diversity, to identify the specific processes and structures which yield outcomes and decision-making processes which are perceived to be binding and legitimate. The question is not whether EWCs can be considered federalist *per se*; it is the extent to which features of a federalist system which have been seen to promote binding cooperation among sub-units can be assumed to exist within EWCs.

It will become apparent that because of a number of key questions which are left open in law and practice, EWCs only in part fulfil the criteria of a federalist political order. This does not mean, however, that EWCs are therefore unable to serve as a forum for the generation of solidarity. This chapter will argue that the same approach toward a discursive/participative solidarity which was outlined in Chapter Three and illustrated in Chapter Five can be adopted in EWCs. Using examples drawn from the experience

of several highly integrative EWCs, such as those at General Motors and Ford, it will be argued that these open questions can be answered in practice.

This chapter will provide the basis for the final chapter, which will summarise the conclusions of this study and their implications for policy, practice, and further research.

### **6.1. The European Works Council Directive (EWCD) and negotiated EWC agreements: a foundation for a federalist order at European company level?**

The European Works Council Directive (EWCD), adopted in 1994, provides for the possibility of establishing a European Works Council (EWC) or a procedure for informing and consulting the workforce or their representatives in companies employing at least 1000 people, of which at least 150 work in at least two of the currently 28 countries covered by the Directive.<sup>18</sup>

Until September 1996, companies and their (national-level) employee representatives were free to negotiate so-called Article 13 agreements to cover the entire workforce within the European Economic Area. Since September 1996, however, the implementing legislation for the EWCD in each Member State requires that an EWC agreement be negotiated with an internationally composed “Special Negotiating Body” (SNB). The rules detailed in the national implementing legislation of the country in which the company has its headquarters<sup>19</sup> apply to EWC negotiations held in that company.

Since September 1996, under Article 6 of the EWCD, negotiations to establish an EWC can be triggered by a formal request to do so stemming from at least two countries. Each country in which the company or group of companies has establishments has the right to delegate at least one member to the SNB; further seats are allocated proportionally among the countries according to relative workforce size. Should the SNB and central management fail to reach agreement within three years of the formal request to open negotiations, or should central management fail to respond within six months to a valid formal request to open negotiations, then the fallback provisions laid

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<sup>18</sup> The EWCD applies to all Member States of the European Economic Area (EEA), i.e., the EU plus Iceland, Liechtenstein, and Norway.

<sup>19</sup> The EWCD also applies to companies or groups of companies headquartered outside the EEA: in this case, non-European companies must either nominate a country within the EEA to serve as central management for the purposes of the Directive, or if they fail to do so, the legislation of the country in which the largest workforce is employed applies.

out in the EWCD Directive's so-called "Subsidiary Requirements" apply, thereby establishing an EWC by law.

The SNB and central management can also agree to apply the subsidiary requirements, rather than negotiate a tailor-made agreement. With only four known exceptions<sup>20</sup>, however, all of the at least 760 EWC agreements (ETUI 2002)<sup>21</sup> negotiated in the past ten years have opted for a negotiated agreement under Articles 6 or 13.

The incentive effect of the passage of the EWCD is striking. Whereas 49 EWC agreements were known to exist when the EWCD was signed in 1994, this figure more than doubled to 105 in the course of 1995, and a further 322 agreements were known to have been signed prior to the application of the Directive in all Member States in September 1996 (ETUI 2002: 15)<sup>22</sup>.

In comparing the constitutional character of EWCs and CWCs, two sources are thus essential. First, the subsidiary requirements as they are laid out in the Annex to the EWCD and as they have been implemented in the EWC legislation in each EEA Member State provide valuable clues about the default constitutional character of EWCs. Second, the primacy and near universality of the negotiated option has given rise to wide differentiation in the provisions governing the composition, operation and competence of EWCs. Moreover, practice has evolved beyond the actual rules laid down in the agreements; in many cases, issues and rules of constitutional relevance have been clarified in the light of actual EWC practice. Nonetheless, by examining the national implementation of the subsidiary requirements and by drawing upon the numerous studies which have examined both EWC agreements and EWC practice, we can reach some conclusions about the constitutional character of EWCs more generally.

At first glance, the so-called subsidiary requirements detailed in the Annex to the EWC Directive (EWCD) lay out an essentially federalist framework for centralised interest representation at the European level.

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<sup>20</sup> BSN Glass, Deutsche Bahn, Hauni-Körper, and Moulinex.

<sup>21</sup> Unfortunately, reliable and comprehensive figures about the number of EWCs in existence are not available. The 740 EWCs identified by the ETUI are clearly a low estimate, however: while the ETUI counts only some 100 EWCs in German companies in all sectors, the IG Metall counts some 96 EWCs in German-based companies in the metalworking, textile, and woodworking sectors alone. Nonetheless, since the ETUI study analyses the largest known sample of EWC agreements, it is an extremely useful resource.

<sup>22</sup> The starkness of these increases might also in part reflect the successes of the ETUI's concentrated efforts to register EWC agreements.

However, while the framework, or ground rules, laid out in the German *Betriebsverfassungsgesetz* applies to all German companies, there are two important sources of variation in EWCs: the first lies in the fact that the Directive and in particular its subsidiary requirements have been transposed with slight differences into national legislation. The second source of variation lies in the fact, noted above, that virtually all EWCs are based on negotiations rather than direct application of the law. This means that the actual provisions defining the ‘political order’ of employee representation at the European company level vary. In other words, because the EWCD provides for a primacy of negotiated agreements, rather than specifying the precise workings applicable to all EWCs, each individual EWC is governed by its own rules.

At the same time, however, studies tracing the development of EWC agreements (Carley and Marginson 1998, 2000) have clearly demonstrated that EWC agreements have over time converged both towards one another as well as towards the subsidiary requirements laid down in the Directive. Furthermore, studies have shown that EWC practice has often developed beyond what is detailed in the agreements.

In this sense, the cross-border institutional arrangements laid out in the EWCD can serve as a conceptual blueprint for a federalist system of employee representation at the European level. The basic rules about composition, competence, and functioning of EWCs satisfy many—but not all—key tenets of federalist theory. As will be seen below, they provide the means to at least sketch the outlines of a federalist political order at the European level, but the wide variation in individual EWC agreements and practice may result in important gaps.

These gaps have important implications for EWCs’ ability to generate solidarity, and will be discussed further in later sections of the chapter. Chief among these open questions are the undefined decision-making procedures within EWCs, the rules governing the provision of a mandate for the EWC, the potential of EWCs to serve as negotiation partners, and the impact of this on national-level IR.

The following section will more closely examine several key features which shape the constitutional character of EWCs: the ways in which representatives are delegated to the EWC, its composition, its processes, the rights and competences of EWCs, and legal safeguards. Drawing on a comparison of, on the one hand, the provisions of the EWCD’s subsidiary requirements as they have been transposed into national legislation and the ways in which these questions have been settled in voluntary EWC agreements and, on the other hand, the German *BetrVG*’s provisions governing the operation of Central and Group Works Councils, an assessment of the constitutional nature of EWCs will be made. The provisions of the EWCD, the national implementing

legislation, and their actual operationalisation in EWC agreements combine to yield a far less straightforward picture than does the German *BetrVG*.

### **Delegation to the EWC: who is a member?**

It will be recalled from Chapter Three that according to the *BetrVG*, each local works council has the right to nominate two members from among its number to represent that site in the Central Works Council. The decision within the delegating works councils is made by simple majority.

As a rule, the members of EWCs are delegated or elected by the local workforces or their representatives in the various countries. The method of nomination is left to each Member State to regulate in its implementing legislation in accordance with national law and custom. It is important to note that these rules are *not* subject to company-level negotiation: the method of delegation to the EWC which are laid down in the national implementing legislation apply to all representatives from that particular country who are elected to any EWC set up based on the law of any EEA member state (whether negotiated or by application of the subsidiary requirements).

Interestingly, the method of nomination varies; it is, for example, not necessarily ensured that the entire national workforce participates in the nomination or election of their country representative(s) (Buschak 1998). An overview of the nomination rules in the national implementing legislation is provided in Table 7 below.

A key difference between the *BetrVG* and the EWCD is that while the *BetrVG* specifies that the local works councils delegate members to the CWC or GWC from among its own members, there is no such requirement in the EWCD that the members of the EWC be members of local works councils or other forms of employee representation. The implementing legislation in each country only requires that the EWC members be employees of the company, but leaves it open whether they must also hold office as employee representatives. Such a requirement can be – and often is -- specified in the individual EWC agreements, however.

It should be noted that experience has shown that the precise method of nomination or election to the EWC is sometimes flouted or ignored in practice—not only by management intervention but also on the part of the employee representatives or trade unions charged with fulfilling the procedures required by law. At the same time, there is no reason to assume that the rules laid out in the German *BetrVG* are always followed to the letter, either. Recent experience with EWCs, however, suggests that

these practices are waning, as employee representatives and unions increasingly come to recognise the (potential) importance of European-level representation.

Nevertheless, the possibility that members of the EWC may not be part of employee representation systems at the local or national level, let alone that they may not be democratically legitimated in some way, represents important limitations to the capacity of an EWC to function as a federalist additional layer at the company level. Since the notion of federalist ‘collective agency’ rests on an institutional articulation between different subunits, it is a precondition that the EWC’s members are also involved in interest representation at the local and/or national level if it is to be considered a legitimate centralised level of interest representation within a federalist system. This does not mean that the EWC cannot play an important role in obtaining and disseminating information, but its capacity to act will stop far short of generating social cohesion if it has no connection to lower levels of interest representation which is seen by all relevant actors to be democratically legitimate.

**Table 7: National EWC Legislation: Method of nomination of domestic employee representatives to EWCs**

	<b>National EWC Legislation: Method of nomination of domestic employee representatives to any EWC</b> <i>Figures indicate sequence of nomination methods where provided for</i>
<b>Austria</b>	Nomination by peak employee representation: Group, central and/or local works council(s) ( <i>Konzernvertretung, Zentralbetriebsrat, Betriebsrat</i> ) and/or works committees ( <i>Betriebsausschuss</i> ) as appropriate.
<b>Belgium</b>	1. Works council ( <i>comité d'entreprise</i> ); 2. Health and safety committee; 3. Trade union delegates on the basis of an agreement by the competent <i>Commission Paritaire</i> ; 4. Workforce election by secret ballot.
<b>Cyprus</b>	1.Existing employees’ unions; 2: Direct election by the workforce.
<b>Czech Republic</b>	Appointed at a joint meeting of employees’ representatives, votes weighted proportionally.
<b>Denmark</b>	1.Works council; 2. Trade union delegates; 3. Workforce ballot.
<b>Finland</b>	1. Election procedure based on an agreement; 2. Health and safety delegates
<b>France</b>	Trade unions designate from central or local works council ( <i>comité d'entreprise, comité d'établissement</i> ) or union delegation ( <i>délégation syndicale</i> ): distribution of seats in accordance with results of last elections.
<b>Germany</b>	Nomination by peak employee representation: Group, central, and/or local works council(s) ( <i>Konzernbetriebsrat, Gesamtbetriebsrat, Betriebsrat</i> ) or combination thereof as appropriate.

<b>Greece</b>	Trade unions, works councils, or workforce by direct election.
<b>Hungary</b>	1. Central or local works council(s) (jointly where appropriate); 2. Workforce ballot.
<b>Ireland</b>	Secret ballot of whole workforce or by other arrangement as agreed between management and employees
<b>Italy</b>	1. Works council ( <i>RSU</i> ) together with trade union signatories to applicable national-level collective agreement; 2. Trade unions and management agree on procedure
<b>Latvia</b>	Same procedure as trade union representatives at national level.
<b>Liechtenstein</b>	1. Employee representatives; 2. Direct election by workforce.
<b>Lithuania</b>	1. Union or workplace employee representatives; 2. Workforce ballot.
<b>Luxembourg</b>	Nomination by <i>délégations centrales</i> or local <i>délégations du personnel</i> . Possibility of distinction between white and blue-collar groups of workers.
<b>Malta</b>	Workforce ballot.
<b>Netherlands</b>	Nomination by peak employee representation: 1. Group, central, and/or local works council as appropriate ( <i>groeps ondernemingsraad, centrale ondernemingsraad, ondernemingsraad</i> ); 2. Secret ballot among workforce.
<b>Norway</b>	1. Secret ballot by the workforce; 2. On the basis of the rules for electing workers' representatives.
<b>Poland</b>	1. Appointment by representative trade union, jointly if several unions represented; 2. Secret ballot on candidates proposed by unions, 50% quorum; 3. If several sites: election of EWC members from among delegations from each site, size of delegation from each site dependent on relative size of site workforce.
<b>Portugal</b>	1. Joint designation by works council ( <i>comissao de trabalhadores</i> ) and trade unions representing at least 5% of the workforce; 2. Nomination of candidates by at least 10% of the workforce and election by secret ballot.
<b>Slovakia</b>	Election by employee representatives, jointly where appropriate.
<b>Slovenia</b>	Elected by workforce in secret ballot. Nomination of candidates by works council, representative trade unions, and/or groups of at least 50 workers.
<b>Spain</b>	<i>Comité de empresa</i> or <i>delegados de personal</i> or unions representing majority of workforce.
<b>Sweden</b>	1. Representative trade union(s) which have signed collective agreement, jointly where appropriate; 2. Nomination by trade union with majority membership.
<b>United Kingdom</b>	1. Election or appointment by employees' representatives; 2. Where not all employees covered by an existing agreement, direct workforce ballot supervised by external election supervision agency.

Sources: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden: Buschak 1998; Czech Republic, Hungary, Latvia, Poland, Slovakia, Slovenia:

*Pichot 2003; Cyprus, Estonia, Lithuania, Malta and UK: own research. Iceland and Estonia: no EWC legislation in English, French, or German available at the time of writing.*

### **Composition of the EWC: distribution of seats**

Under the *BetrVG*, each local works council, regardless of the size of the local workforce, has the right to delegate two of its members to represent the site at the Central Works Council. Different workforce sizes are reflected in different voting strengths of site representatives.

Under the provisions of the subsidiary requirements laid out in the EWCD, each country in which the company has employees is entitled to at least one seat on the EWC. Further seats are to be distributed according to the relative strength of each national workforce. All the national implementing legislation has adopted comparable rules for EWCs established by act of law rather than negotiation: each EEA country in which the company has employees has the right to elect or nominate at least one member; there is some variation, however, in the precise key to be applied in the allocation of additional seats according to the relative size of the national workforces (Buschak 1998; Pichot 2003).

However, while EWC agreements concluded under Articles 6 and 13 must in principle cover the entire workforce (i.e., in all Member States) this has often not been taken to mean that each country must be directly represented on the EWC.

Carley and Marginson (2000: 23) found that just under half of Article 13 (43%) and Article 6 (45%) agreements define minimum workforce size as a threshold for a country to be directly represented on the EWC. Carley and Marginson (2000:23) also note that the thresholds applied tend to be lower in Article 6 than in Article 13 agreements: in their analysis, two thirds of the former set the threshold at 50 employees or less, as compared with only a quarter of the latter. According to Carley and Marginson, this has resulted in Article 6 agreements providing for a wider and flatter scope of representation which is more driven by geographical considerations than relative workforce size.

In practice, the question of thresholds has proven a key stake in the employee representatives' negotiation strategy. Because of the costs of interpretation and translation, employers are keen to limit the number of countries directly represented on the EWC. As a rule, employee representatives and trade unions only agreed to implement thresholds in return for an improvement in other provisions, such as a



second regular annual meeting, or the inclusion of countries not covered by the Directive, such as Switzerland, the accession countries (before 2004), or even Morocco and Turkey. Furthermore, the fact that all EEA countries had the right to participate in SNB negotiations under Article 6 also led to a wider scope of representation in those EWCs set up after the Directive took effect in national law in 1996. Many EWCs have also arranged for written information, such as the minutes of EWC meetings, to be sent to sites or countries not directly represented. The aim of such written information processes is first to ensure that all employees and their representatives know about the existence of the EWC, and second to keep them informed about its work. New technologies such as intranet platforms have also been used to communicate the work of the EWC to the broader workforce.

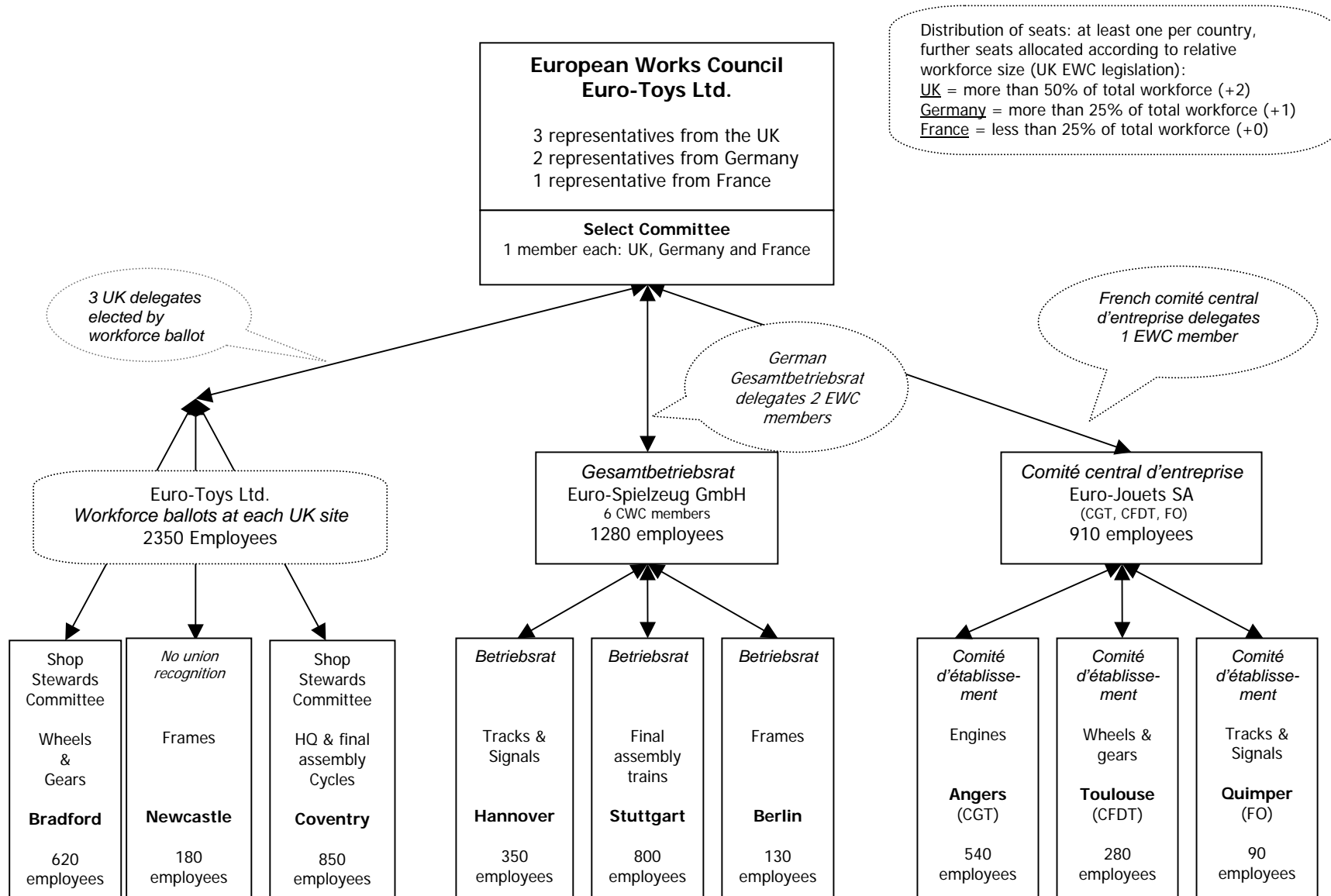
Finally, it should be noted that geographical coverage and workforce size are not the only criteria that have been applied to the allocation of seats. Carley and Marginson (2003: 25) identified a number of other factors. 15% of the Article 6 agreements they analysed provided for divisional or sectoral criteria, thus ensuring that a company's sectoral diversity is reflected on the EWC. 6% of Article 13 agreements differentiate between production sites and sales outlets, for example by guaranteeing production sites a direct representation in the EWC regardless of workforce size. 7% distinguish between white and blue-collar workers, and 6% refer to the gender balance on the EWC. Finally, the need to accommodate trade union pluralism, particularly in France, but also in Italy, Portugal and Spain, often led to the provision of several seats to represent the different unions in these countries in EWCs, rather than as a reflection of relative workforce strength (Gohde 2004: 21). Although such alternate considerations besides workforce size or geographic coverage are found in a minority of agreements, they nonetheless illustrate the significant leeway allowed in defining the composition of EWCs. Experience suggests, furthermore, that as more and more early EWC agreements come to be renegotiated, employee representatives and management are moving away from sheer numbers-based seat allocation in favour of other criteria, such as divisions or production sites, in order to take the company's structure better into account.

In sum, the rules governing the actual composition of EWCs allow for far more variation than do those defining the composition of Central and Group Works Councils under the *BetrVG*. In particular, it is rather common that in particularly wide-ranging companies, countries with smaller workforces are denied direct representation on the EWC, whereas local works councils are automatically given the right to be represented on the CWC and/or GWC.

## **EWC meetings and the political and administrative infrastructure of the EWC**

Chapter Three and the case study of DaimlerChrysler underscored the vital role which the institutional substructure of the central works council plays in enabling the CWC to fulfil its integrative and coordinating role. These committees and the ongoing multi-directional flow of information anchors the discursive and participative processes within the CWC which ultimately support the generation and maintenance of solidarity and cooperation.

**Figure 30: A multi-level system of works councils according to the EWC Directive**



These findings echo Watts' observation that federations as a rule have defined "specific processes and institutions to facilitate intergovernmental administrative and political interaction" (Watts 1991:229). Next to the EWC itself as the "central institution [which is] designed to ensure that the interests of regional minorities and groups are accommodated in the process of central policy-making" (Watts 1991: 229), there are two key processes which serve to underpin the integrative work of the EWC. The first is the guaranteed right to meet independently (i.e., in the absence of management), and the second is the establishment of an executive committee to run the affairs of the EWC between meetings, as well as the possibility of setting up further working groups to address certain issues.

That all three of these processes and institutions are relatively under-developed, particularly as compared with both the provisions of the BetrVG and with the experience of the CWC at DaimlerChrysler, has important implications for the capacity of EWCs to generate a normative basis for collective action and solidarity.

#### *Meetings of the EWC*

As outlined in Chapter Three, works councils at all levels within the German system of workplace codetermination meet as necessary. The actual frequency of works council meetings at any level has never been systematically investigated. However, the lack of contestation of this right before the German labour courts suggests that this open-ended definition has not proven problematic in practice. Indeed, anecdotal evidence suggests that practice varies greatly across German companies, depending on works council members' own perceived need to meet in fulfilment of their duties.

The situation within EWCs is at first glance quite different: according to the subsidiary requirements, the EWC has the right to meet once per year. According to research conducted by Carley and Marginson, 86% of Article 13 agreements and 83% of Article 6 agreements provide for a single annual meeting (2000: 29). Nevertheless, some EWCs meet more frequently than their agreements prescribe: anecdotal evidence suggests a great deal of variation and even fairly extreme cases: for example, the select committee of the EWC at Corus meets monthly with central management.

However, in addition to these regular meetings, both the EWC Directive and nearly all EWC agreements provide for an extraordinary meeting in the case of circumstances such as transfers of production, cutbacks or closures. It was not until the Directive was adopted, however, that its provision for extraordinary meetings became the norm in both Article 13 and Article 13 agreements (Carley and Marginson 2000: 19). In many

cases, however, attendance is limited to the members of the select committee (if one has been established) and further representatives of sites affected if they are not already represented on the select committee.

It is instructive to look more closely at the frequency of extraordinary meetings, since the ability to convene them under specific circumstances which are linked to the specific competence of the EWC (see below) comes close to the German practice of convening works council meetings as necessary. However, several factors combine to make it difficult for EWCs to make use of this right in practice. First, the transnational impact of restructuring measures is not always immediately apparent given asymmetrical information at the local and national level; second, the need to convene an extraordinary EWC meeting will often be at short notice, since by the time the transnational impact of a measure becomes apparent, it may already be in its implementation stage; third, insisting on the right to convene a (costly) extraordinary meeting, in particular if the restructuring measures put workforces in competition with one another and thus on the defensive, requires strong coordination or at least trustworthy contact across borders; and finally, if the EWC has not played a role in cross-national restructuring processes before, it may not be among the catalogue of instruments that local and national employee representatives perceive at their disposal.

However, a survey conducted in spring 2005 of EWCs in metalworking, textile and woodworking companies headquartered in Germany suggests that these impediments may not be so difficult to overcome (Politycki and Schneider 2005). Of 70 EWCs which had been confronted by transnational restructuring in the past two years, 30 EWCs and/or their select committees had held an extraordinary meeting with European central management. Of those who had not convened such meeting, seven had not done so because there was a regular EWC meeting already scheduled in the near future. This means that 37 out of 70 EWCs, or 53% of those surveyed, successfully made use of their right to convene extraordinary meetings. And in some companies, several extraordinary meetings were held. At Bosch for example, seven extraordinary meetings were held to deal with problems in specific divisions over the two past years alone.

Taken together, then, the regular meetings, together with extraordinary meetings called according to specific circumstances, yield a varied resource for the ability of the EWC as a central institution to develop the integrative capacity typical of a federal political order.

### *The right to meet independently*

An important right which shapes the ability of an EWC to play a role in coordinating and aggregating the interests of the entire European workforce is its right to meet independently of management. This right is not only guaranteed in the subsidiary requirements, but is also explicitly provided for in nearly all EWC agreements, regardless of whether these are so-called mixed bodies (as in the French model) or employer-only bodies (as in the German model). As Carley and Marginson (2000) found, this right was already fairly common in early Article 13 agreements (65%), and became even more common (87%) in Article 13 agreements signed after the Directive was passed; according to Carley and Marginson (2000), the right to meet independently of management can now be considered universal, as it is to be found in all Article 6 agreements they examined.

However, the subsidiary requirements and many EWC agreements only specify an independent meeting among employee representatives prior to the meeting with central management. There is no explicit provision that the employee representatives have the right to meet following their meeting with management — even though the EWCD makes reference to their right to deliver an opinion following extraordinary meetings (see below). As Carley and Marginson (2000: 31-32) found, only 22% of Article 13 agreements and 51% of Article 6 agreements specify both a preparatory meeting and a follow-up meeting. Nevertheless there is evidence that an employee meeting both before and after the meeting with management is common practice, whether or not it is explicitly provided for in the agreement.

The real difficulty in practice, however, is the insufficient time frequently allocated for such de-briefing meetings. The costs of interpretation and accommodation mean that companies often pressure their EWC to hold their internal meeting following their meeting with central management in time for the participants to travel home on the same day. But unless the employee representatives take the time to jointly assess what they have heard, they will not gain the full picture or an appreciation of the specific situations at other sites in other countries. As the case study of DaimlerChrysler made clear, it is important that all members have a basic understanding of the situation and points of view at other sites if they are to be in a position to appreciate the overall dynamics of their interdependence.

### *Select committees and working groups*

As outlined in Chapter Three, the *BetrVG* provides for an executive committee of the central works council to run its day-to-day affairs and to serve as first point of contact between management and the CWC. As seen in the case study of DaimlerChrysler, such institutions play a crucial internal role in coordinating common positions and ensuring the flow of information, even to the extent that efficiency was sacrificed for transparency and broad participation.

The EWCD's subsidiary requirements provide for the establishment of a so-called 'select committee', consisting of at most three members, "where [the size of the EWC] so warrants". At least half of the Member States have not specified a threshold, while the remaining Member States have specified size thresholds of between nine and 13 EWC members. The vast majority of EWC agreements in fact provide for a "select committee" to run the day-to-day business. (Carley and Marginson 2000). Its tasks include setting the agenda, preparing and organising EWC meetings, liaising with EWC members, and drawing up minutes or a communiqué. In many cases, and as provided for in the EWCD, they are responsible for information and consultation processes in extraordinary circumstances, and otherwise receiving and disseminating information both from among the EWC members as well as from management. In some EWCs, issue-specific working groups have been set up, for example dealing with health and safety at Coca Cola Enterprises and Arcelor, equal opportunities at Ericsson, bringing together the representatives of the manufacturing sites at General Motors, or bringing together representatives from the sales and service sites across Europe at DaimlerChrysler.

In their analysis of Article 13 and Article 6 agreements, Carley and Marginson (2000: 35) found that more than eight out of ten (83%) Article 6 agreements establish some form of executive committee or bureau.<sup>23</sup> Experience in metal sector at least has shown, however, that many EWCs set up earlier (and which were less likely to have provided for an executive committees) have since established one, either on the basis of a later informal or formal agreement with the employer or as part of their own internal rules of procedure.

Interestingly, eight Member States have gone beyond the EWCD in their subsidiary requirements by specifying that the members of the EWC's select committee must

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<sup>23</sup> This represents a significant increase compared to earlier Article 13 agreements, and, as Carley and Marginson point out, the spread of executive committees clearly reflects the influence of the EWCD: only 35% of the Article 13 agreements signed before the Directive came into force and only 65% of the Article 13 agreements signed between 1994 and 1996 provide for select committees (Carley and Marginson 2000).

come from different countries, the Belgian implementing collective agreement explicitly leaves the issue to be settled in the EWCs' own rules of procedure, and Luxembourg legislation more generally requires that the members of the select committee established by law must represent different companies (though the implicit intention may amount to a requirement of multi-national representation).

Presumably these requirements were laid down with the intention of ensuring a more representative select committee. Since none of the large-scale formal analyses of EWC agreements (Carley and Marginson 1998, 2000; ETUI 2002) addressed this question, it is not possible to determine the prevalence of multi-national select committees.

Experience and (admittedly unsystematic) evidence suggest, however, that while the 'home country' workforce may occupy more than one seat on the select committee in some cases, multi-national select committees are the norm.

It is striking that among the eight Member States which explicitly require a multi-national select committee, six are new EU Member States. This suggests that the most recently drafted EWC legislation has taken both actual practice and a distinctly 'European' understanding of the EWC as an institution into account (see Table 8 below).

The requirement that the select committee of an international group be internationally composed is in line with the role which this group can play in ensuring a more dense interaction among at least some of its members: as one of the key institutions in facilitating cross-border cooperation and participation within the EWC, in particular since there are relatively few opportunities to participate at all at this level, it is particularly important in this context that the select committee enable a regular exchange of views among representatives of different countries.



**Table 8: Explicit provisions in EWC legislation that members of the EWC select committee must come from different countries.**

<b>EWC Legislation (Subsidiary Requirements)</b>	<b>Explicit provision that members of the select must come from different countries*</b>
EWC Directive and Austria, Cyprus, Denmark, Finland, France, Greece, Ireland, Italy Malta, Netherlands, Norway, Portugal, Spain, Sweden, United Kingdom	No explicit requirement
Czech Republic, Germany, Hungary, Latvia, Liechtenstein, Poland, Slovakia, Slovenia	Explicitly required
Luxembourg	Select committee members may not be employed in same establishment or undertaking
Belgium	Issue left explicitly to EWC's own rules of procedure

*\* Sources: Czech Republic, Hungary, Latvia, Poland, Slovakia, Slovenia: Pichot 2003; remainder: own research. No information available for Estonia, Iceland, or Lithuania.*

### **The rights and competences of European Works Councils**

The principle of subsidiarity has long been one of the hallmarks of EU policy (Bermann 1994). In terms of social policy, this means that European regulation can support or complement existing rights, but can in no way replace them. This principle is clearly stated in Article 12 (2) of the EWCD: “This Directive shall be without prejudice to employees’ existing rights to information and consultation under national law”. Some EWC agreements have taken up this formulation more or less verbatim (Gohde 2004).

Like the *BetrVG*, the EWCD defines the competence of the EWC in territorial terms. Unlike the *BetrVG*, however, the EWCD also contains a non-exhaustive list of issues on which the central body is to be informed and consulted.

According to Paragraph 1 (a) of the subsidiary requirements,

The competence of the EWC shall be limited to information and consultation on the matters which concern the Community-scale undertaking or Community-scale group of undertakings as a whole or at least two of its establishments or group undertakings situated in different Member States.

Carley and Marginson (2000: 17) found that virtually all Article 13 and Article 6 agreements in their sample explicitly stated that the purpose of the EWC is for transnational information and consultation. Gohde (2004: 38) found that all of the

agreements he analysed contain an explicit 'transnationality' principle comparable to that laid out in the Annex to the EWCD.

Interestingly, while this provision in the EWCD, the national implementing legislation, and most if not all Article 6 and Article 13 agreements bears close resemblance to the *BetrVG*'s definition of the competence of CWCs and GWCs (see Chapter Three), the EWCD refrains from specifying further that the EWC is only competent to deal with issues which cannot be dealt with at the national level(s). This suggests an awareness on the part of the EC lawmakers that certain issues may at the same time be dealt with at the national **and** European levels.

The issue of sequencing of national-level and European-level information and consultation has attracted the attention of scholars, practitioners, policy makers and judges: what lies behind this attention is the concern that European-level information and consultation might undermine the right to information and consultation at the national and/or local level. As will be outlined further below, both in practice as well as in jurisprudence, this issue has proven less problematic than was perhaps initially expected: information and consultation at national and European levels have been seen as complementary rather than competing rights.

Carley and Marginson (2000) point out that many Article 13 and Article 6 EWC agreements have taken the EWCD's provision one step further by explicitly excluding consideration of issues whose impact is confined to a single country and which are thus already dealt with by information and consultation arrangements at national and local levels. Interestingly, while such more explicit 'subsidiarity clauses' could be found in nine out of ten Article 13 agreements, they were only found in two out of three Article 6 agreements (Carley and Marginson 2000:19). Gohde's (2004) findings underscore this trend: all the agreements he analysed more or less explicitly exclude issues which only affect one country. Despite this specific exclusion of national-level issues (which goes beyond the 'subsidiarity' provisions of the EWCD), however, none of the 103 agreements analysed by Gohde (2004) took this logic a step further by attempting to define an explicit hierarchy of information and consultation procedures at the different levels.

As is made clear in the preamble to the EWCD, the 'transnational criterion' of the EWCs competence is the very intention of the cross-border multi-level system established with the EWCD. If an issue only affects one country, then it is not a matter to be brought before the EWC. If a measure has an impact on more than one country, then it is dealt with at both the affected national/local level(s) and the European level.

Furthermore, whatever the EWC does, it may not affect the rights and prerogatives of employee representatives granted them by national law or custom.

It must be borne in mind, however, that the enforcement of the 'transnational criterion' is in practice one of the most thorny issues facing EWCs. While a plant may be closed in only one country, it is quite likely that this closure might have important domino effects in other countries, for example if production is increased abroad as a result, or if production at an internal supplier located in another country is cut back as a result. Furthermore, national employee representatives, particularly if they come from a country other than the 'home base' of the company, often use the access provided to top-level European management via EWCs to air grievances which are, strictly defined, local problems. Since the issue of whether or not an issue has cross-border implications is often problematic in practice, a handful of agreements also contain procedural provisions designed to place this assessment jointly in the hands of employee and management representatives (Gohde 2004: 39).

Next to these territorial and (rare) procedural definitions of the EWC's competence, Article 2 of the subsidiary requirements contains a non-exhaustive list of issues for consideration by the EWC at its regular meetings:

The European Works Council shall have the right to meet with the central management once a year, to be informed and consulted, on the basis of a report drawn up by the central management, on the progress of the business of the Community-scale undertaking or Community-scale group of undertakings and its prospects. The local managements shall be informed accordingly.

The meeting shall relate in particular to the structure, economic and financial situation, the probable development of the business and of production and sales, the situation and probable trend of employment, investments, and substantial changes concerning organisation, introduction of new working methods of production processes, transfers of production, mergers, cut-backs or closures of undertakings, establishments or important parts thereof, and collective redundancies.

In their comparison of Article 13 and Article 6 agreements, Carley and Marginson (2000: 18) found that virtually all agreements contain a non-exhaustive list of issues on which the EWC is to be informed and consulted. Only a minority of EWC agreements expressly exclude negotiations.

**Table 9: Issues for Information and Consultation in Article 13 and Article 6 Agreements**

Issue for information and consultation in EWC	Included in EWCD <i>Subsidiary requirements Article 2?</i>	Article 6 agreements, in %	Post-Directive Article 13 agreements, in %	Pre-Directive Article 13 agreements, in %
Economic and financial information	Yes	89	91	91
Employment and social issues	Yes	86	87	89
Business, production, and sales	Yes	82	80	46
Structure	Yes	82	61	46
Transfers of production, mergers, cutbacks and closures, collective redundancies	Yes	76	54	39
Investment	Yes	75	70	39
New working methods	Yes	68	63	50
Organisation	Yes	68	61	35
Environment	No	41	26	15
Health and Safety	No	39	33	35
Training	No	31	27	31
Equal Opportunities	No	20	5	8

*Source: Carley and Marginson (2000: 19)*

As can be seen in Table 9, the issues listed in Article 6 and Article 13 agreements closely mirror those mentioned in the EWCD; indeed, Carley and Marginson (2000) found that the later an agreement was signed, the more closely it tended to mirror the issues specifically listed in the Directive. Later agreements are also more likely to include issues such as training, environmental issues or equal opportunities.

Carley and Marginson also note that the potentially contentious issue of transfers of production, mergers, cutbacks and closures is included in 75% of Article 6 agreements but in only 52% of Article 13 agreements. However, it is instructive to look at the conditions under which an extraordinary meeting can be called. Here, the EWCs competence to deal with issues such as transfers of production, closures and cutbacks is clearly defined.

According to Article 3 of the subsidiary requirements,

Where there are exceptional circumstances affecting the employees interests to a considerable extent, particularly in the event of relocations, the closure of establishments or undertakings or collective redundancies, the select committee, or, where no such committee exists, the European Works Council shall have the right to be informed. It shall have the right to meet, at its request, the central

management, or any other more appropriate level of management within the Community-scale undertaking or group of undertakings having its own powers of decision, so as to be informed and consulted on measures significantly affecting employees' interests.

Unfortunately, neither the comparison of Article 13 and Article 6 agreements conducted by Carley and Marginson (2000) nor the analysis of Article 13 agreements conducted by Marginson et al. (1998) cites the incidence of a clear definition of 'extraordinary circumstances' which would trigger an extraordinary meeting. Based on the analyses of other key provisions in EWC agreements, however, it can most likely be assumed that the definition of extraordinary circumstances also closely mirrors the Directive's specification that closures, transfers of production, mergers and cutbacks which affect more than one country justify an extraordinary meeting.

As the results of the survey conducted by IG Metall (Politycki and Schneider 2005) demonstrate, just under half of those EWCs confronted by transnational restructuring had made use of their right to hold an extraordinary meeting with management in order to address restructuring measures which affect more than one country. Among the reasons given for not having convened an extraordinary meeting was the opinion that since the EWC only had information rights, it had no influence. Other respondents, however, chose to take up contact directly with the employee representatives from other affected sites abroad.

### **European and national courts as umpires**

Watts points out that federal systems do not operate in a legal vacuum; there is normally "an umpire, usually a supreme court, to rule upon disputes over the respective constitutional powers of the two orders of government" (Watts 1991: 229). As outlined in Chapter Three, in the case of the BetrVG, this umpire function is served by the German local and national labour courts.

The European Court of Justice can only be called upon to judge the legality of the interpretation and implementation of EC legal acts, not individual cases. With respect to EWCs, the national labour or civil court systems of the country whose implementing legislation was applied in the establishment of the EWC are responsible for adjudicating in cases of conflict regarding EWC legislation and EWC agreements. For multinationals headquartered in one of the currently 28 countries in which the EWCD applies, it is the national legislation of the home country which applies. Because the procedure for nominating or electing EWC members is exclusively regulated in

national law, it is the national courts which are responsible for dealing with cases involving the election or nomination of EWC members to any EWC, whether the company is based in that country or not.

EWC jurisprudence within the EEA Member states is still fairly underdeveloped. As a recent analysis by the EMF (2005) found, only around 20 cases involving EWCs have been taken to court. Of these, only a handful have been concerned with enforcing EWCs' rights vis-à-vis management.<sup>24</sup> All cases brought to court in Germany revolve around the employees' rights to obtain the information needed to establish an SNB. There have been a number of further cases, not included in the EMF analysis, about enforcement of the rules for nomination or election of EWC members in different countries.

However, four cases brought before the French courts have focussed on the relationship between EWCs and national-level employee representation. At issue was the question of sequencing: whether an EWC had the right to be informed prior to or after information and consultation at the national level. These cases – Renault (1997), Marks & Spencer (2001), Alstom (2001) and Altadis-Seita (2003) – were all based on claims by French employee representatives that national-level consultations about restructuring measures could not take place until the EWC had been informed and consulted, since the results of the EWC meetings would have a direct effect on their strategy and position at the national level. Pointing out that neither European nor French law contains any regulation about the sequence of information between the national and European levels, the judges ruled that each case had to be judged on its own merits. The rulings successively established the principle of 'useful effect' (*effet utile*), which means that the judges had to assess whether the activities of the EWC would have an effect on national-level information and consultation. In each case, the judges ruled that the EWC had to be consulted prior to the closure of national-level information and consultation procedures (Correa 2005).

Article 11(2) of the EWCD specifies that "Member States shall provide for appropriate measures in the event of failure to comply with this Directive; in particular, they shall ensure that adequate administrative or judicial procedures are available to enable the obligations deriving from this Directive to be enforced". In her analysis of EWC legal status and proceedings in the Member States, Büggel (2002) has found that while in

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<sup>24</sup> The most well-known EWC court case is indisputably the Renault case. In 1997, a French court ruled that company had breached its obligations under its EWC agreement in having announced the closure of its plant in Vilvoorde, Belgium without having first informed and consulted the EWC. The court ordered the company to suspend implementation of the closure until it had done so (EWCB 1997).

most countries, EWCs have a legal personality as a body and hence the capacity to sue, in a few countries, notably Belgium or Finland, it is only EWC members and/or trade unions which have that right. Although this key question has not yet been tested in every country, it seems reasonable to assume that EWCs and/or their members have the legal means to enforce their agreement—at least vis-à-vis management.

But what about disputes between levels of employee representation? As noted in Chapter Three, the vast majority of court cases involving EWCs revolve around disputes between local and central levels about who has regulatory authority for a certain issue (Däubler et al. 2002). In this sense, the French court cases about sequencing information are about a related issue: however, the cases were not about which level should be competent to deal with an issue at the expense of another; they were about ensuring that both levels were adequately informed and consulted.

Insofar as the EWC legislation and agreements regulate actions such as participation in EWC meetings or access to information, individuals affected would be able to enforce their rights, if need be against the EWC and/or its individual members. But until there is a clearer picture of an EWC's ability to act *on behalf* of its constituent parts, there remain some question marks about the existence of an umpire to decide on federalist aspects of divided and shared competence.

## **6.2. Decision-making in EWCs: an open question**

Probably the most critical open issue of relevance here – and one not hitherto addressed in empirical research – is the fundamental question of how EWCs make decisions. Leaving aside for the moment the controversial question of whether and how EWCs can negotiate agreements at European company level (which clearly requires decision-making and a mandate), the ways in which EWCs make decisions is also relevant to at least three less contested areas of EWC activity: first, the election of the select committee; second, the elaboration of internal rules of procedure; and third, the right of the EWC to deliver an opinion in the context of consultation.

Quite surprisingly, the subsidiary requirements laid out in the EWCD do not specify the arrangements whereby an EWC enacted by law is to take decisions. Instead, it merely states in paragraph 1 (c) that the EWC “shall adopt its own rules of procedure”, presumably leaving the question of voting to those rules of procedure. In the light of the detailed rules regarding decision-making in the SNB, the omission of any similar rules with regard to the EWC is striking.

Apparently, however, this provision was too open-ended for many legislators at national level. At least ten Member States have specifically laid down that an EWC established in application of the subsidiary requirements shall take its decisions by majority vote (see Table 10, below). Among those countries whose EWC legislation only specifies that the EWC shall adopt its own rules of procedure (without specifying how), only Slovakian and Austrian legislation has specified that this (*a priori*) decision is to be taken by majority vote. Austrian legislation, however, goes a small step further: while it does not prescribe majority vote for all EWC decisions, it does require that the EWC members decide by majority vote what authority the EWC Chairperson and the select committee shall enjoy.

**Table 10: Decision-making within EWCs established according to the subsidiary requirements**

<b>EWC Legislation</b>	<b>Decision-making in EWCs established according to the subsidiary requirements</b>
EWC Directive and France, Denmark <sup>a</sup> , Ireland, Italy, Cyprus, Portugal, Belgium, Malta, Netherlands, Slovakia, Sweden, United Kingdom	The EWC shall adopt its own rules of procedure
Austria ( <i>particulars explicitly left to rules of procedure</i> )	The EWC shall adopt rules of procedure by majority vote of its members. The rules of procedure may in particular lay down rules concerning: 1. The establishment, composition and management of the select committee [...]; 2. matters with regard to which the right to adopt resolutions independently is conferred upon the select committee; 3. the nature and scope of the representative authority of the chairman of the select committee. [194 (3) 1-3]
Spain, Greece, Hungary, Latvia	The EWC shall adopt its agreements by a [simple or absolute] majority of its members.
Czech Republic, Germany, Poland, Liechtenstein, Luxembourg <sup>b</sup> , Slovenia	The EWC shall adopt decisions by majority of votes of members <b>present</b>
Finland, Norway	No mention of rules of procedure or majorities

<sup>a</sup> Denmark: rules of procedure to be adopted by select committee, not full EWC.

<sup>b</sup> Luxembourg: members present or represented by duly authorised proxies.

\* No information available for Estonia, Iceland or Lithuania.

It might be argued that since the EWC is meant for the purposes of information and consultation, there is no need to define decision-making procedures. With respect to its



right to be informed about transnational issues, this may be true; furthermore, Article 2(f) of the EWCD defines ‘consultation’ only as “the exchange of views and establishment of a dialogue between employees’ representatives and central management”. At the extreme, this consultation might only refer to an exchange of views between individual EWC members and central management.

However, Article 3 of the Annex to the EWCD prescribes that a meeting called in extraordinary circumstances be based on a report, on which “an opinion may be delivered at the end of the meeting or within a reasonable time”. Interestingly, as many as nine countries have *not* specifically stated in their implementing legislation that the employee representatives have the right to submit an opinion or position in person or in writing to central management either at the end of the extraordinary meeting or within a reasonable or specified period following the extraordinary meeting<sup>25</sup>. The remaining Member States’ EWC legislation<sup>26</sup> does specify that the EWC has the right to submit an opinion. Seen in the overall context of the EWC Directive, the provision for an opinion to be delivered by the EWC arguably implies group decision-making towards a single joint position. Alternatively, such a joint position may be implicitly based on a consensus, or if there is no consensus, then conceivably a majority and minority opinion could be submitted, for example.

Whether or not the ‘opinion’ of the employee representatives is a joint opinion or a set of separate opinions, the fact that all national EWC legislation specifically provides for the election of an (employee-side<sup>27</sup>) chairperson and elections to the select committee obviously implies that the EWC is meant to take at least some decisions as a group. That such decisions should be made unanimously seems unreasonable. Indeed, in the light of the explicit majorities specified for the SNB, and given that those Member States which obviously saw the need to regulate decision-making within EWCs all specified majority voting, it is more likely that decisions are not intended to be taken unanimously. Because this question of decision-making in an EWC is a fundamental aspect of its constitutional and political identity and the perceived legitimacy of its decisions, it is worthwhile to explore this question in more detail.

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<sup>25</sup> The nine countries which have not made specific reference to the employee representatives’ right to respond are: Belgium, Czech Republic, Finland, Germany, Hungary, Luxembourg, Portugal, Slovakia, and Slovenia.

<sup>26</sup> The EWC legislation for Estonia, Lithuania, and Iceland is not included in this analysis.

<sup>27</sup> In all national legislation which provides for a default EWC which is made of both management and employee representatives (the so-called French or ‘mixed’ model), the employee representatives elect a Secretary who act as the employee-side chairperson.

As described above, according the German *BetrVG*, local works councils delegate two members each to the Central Works Council, regardless of the size of the local workforce. Decisions within the CWC are reached by means of a system of weighted majority voting, whereby each CWC member casts as many votes as he or she represents at the local site.

In the case of EWCs, the EWCD and all the national implementing legislation specify an allocation of seats based on the principle of universal representation (one country, at least one seat), augmented by additional representatives in line with the relative size of the national workforces. In other words, the number of representatives from each country is broadly based on the relative size of its national workforce. Assuming a system of 'one member, one vote', does this allocation of seats amount to a comparable system of weighted majority voting within the EWC?

What little evidence there is on this issue resoundingly refutes this idea. As Carley and Marginson (2000) have demonstrated, the allocation of seats according to relative workforce size does not translate into representative seat allocations in the EWC: on the contrary, the seat allocation keys are so blunt that the wider the range of countries involved in the EWC, the greater the chance that a significant distortion in favour of smaller workforces is the result. Of the 15 agreements in their sample which included relevant information about workforce sizes and the allocation of seats on the EWC, Carley and Marginson found that in 13 cases, representatives of a minority of the workforce could make up a majority on the EWC. Furthermore, Carley and Marginson found that of nine cases in which a single national workforce (as a rule, the home country workforce) clearly represented over half of the company's total workforce across Europe, this was reflected in a majority of home-country seats on the EWC in only two cases. In the remaining seven cases, the majority national workforce holds only a minority of seats on the EWC; and in two extreme cases, they only hold a quarter of the seats on the EWC. Indeed, Carley and Marginson point out that their findings raise "questions about the nature of democracy in EWCs, and the balance between giving all countries a say and a concern that the majority of a multinational's workforce can be overwhelmingly outvoted in some cases" (2000: 24-25).

However, these analyses implicitly assume a system of one member, one vote, without, however confirming whether the EWC agreements actually provide for such a decision-making mechanism. In fact, a surprisingly high number of EWC agreements seem to remain silent on the question of how precisely an EWC takes decisions. Perhaps the issue has indeed been widely settled in EWC rules of procedure; these, however have never been systematically analysed. The problem remains that the

EWCD and agreements refer to elections and delivering opinions, without necessarily defining how such decisions are to be jointly reached.

More importantly, this analysis of majorities implicitly assumes that all representatives of the same country will vote the same way, which is not necessarily a sound assumption. As Stirling and Tully have found, “the groupings that eventually emerge on EWCs may not be those predicted by the common argument of host-country domination” (2004: 77). According to Stirling and Tully, this is not only due to the potentially divisive effects of cultural or ideological differences within countries and national trade union movements; they go on to identify at least three further lines of differentiation besides nationality and language which shape EWC members’ perception of their particular ‘constituency’. The first of these is union identity: an EWC member may represent a single union, a multi-union national constituency, or may be a non-union representative. The second line of differentiation may have more to do with company structure: an EWC member may represent a particular occupational group, a particular site or division, or the whole of the national workforce. The third source of representative identity may lie in his or her role in the EWC: he or she may be chairperson, a member of the select committee, or may have no special function (Stirling and Tully 2004: 77). Personal loyalties and affinities, as well as the dynamics of leadership and power can also be expected to play a role. Overall, depending on the decision at stake and/or the composition and culture of the group, there may very well be other and potentially overlapping definitions of ‘constituency’ than mere country of origin.

Returning to the question of seat allocation and the principle of ‘one member, one vote’, further issues tend to exacerbate the dilemma of over- and under-representation. Where thresholds have been defined which not only exclude some countries, but which also serve to allocate further seats according to a company-specific distribution of employment and thus a potentially arbitrary logic, this serves to further distort the tenability of simple majorities. In addition, as Carley and Marginson (2000) have found, other considerations, such as ensuring that all production sites, divisions, or occupational groups in each country are represented in the EWC, have guided the allocation of seats. Gohde (2004) has pointed out that the need to ensure that all trade unions from some countries are represented has meant that more seats were allocated to those countries. Moreover, the definition of numerical thresholds is also quite likely in reality to be a means of defining the type of operation in a country. Larger national workforces are usually working in production sites; the most common thresholds of 50 employees or more (2/3 of Carley’s and Marginson’s sample of Article 6 agreements) are thus designed to ensure that production sites are represented – potentially at the

expense of smaller sales and service sites , if these are the only company establishments within a country.

Recent evidence from EWC negotiations and re-negotiations suggests that EWCs may be moving away from a straightforward application of EWC seat allocation according to workforce size in favour of other factors. In several recent negotiations in the metal sector, for example, 'home country' representatives have agreed to a reduction in their EWC representation in return for concessions from the employer in the form of extending the coverage of the EWC agreement to include non-EEA countries or additional seats for specific countries or divisions. To name a more extreme example, in the course of re-negotiating its EWC agreement in 2004, the EWC at Actaris decided to allocate its seats on the EWC by division rather than by employment figures. Each of the company's national workforces in 13 countries elects at least one member to the EWC, with an additional member delegated for each division which is active in that country. The end result is that the French and German works councils each delegate three members to the EWC, even though the 1600-strong French workforce is over twice as large as the German.

In summary, the more arbitrary and company-specific the seat allocation, the more problematic the notion of 'one member, one vote' becomes, since its fundamental democratic legitimization, i.e., the proportional representation of national workforces within the EWC, has become replaced by other seat allocation factors.

Is there a solution to this dilemma? There may well be, but the sheer variety of possible constructions means that this is an issue which each EWC can best decide for itself according to its own collective perception of what is 'fair'. Some EWCs may prefer to continue to operate in a spirit of consensus, without formal decision-making rules. This has the advantage that it pragmatically veils potential conflicts without hindering discussion. If the 'spirit of consensus' is understood to mean an absolute requirement of unanimity, however, a single member of the EWC could block all decisions. The General Motors EWC, for example operates by consensus, rather than with formal voting procedures. Members point out, however, that power relationships within the EWC nonetheless clearly shape the outcomes of decisions in favour of the most influential sites.

Other EWCs may prefer to define a system of majority voting. There are two basic models: the first is a system of 'one member, one vote'. As discussed above, however, it must be clear that this may result in significant over- or under-representation of certain countries or divisions, for example. The second basic model is a system of qualified majority voting. The most common method is to weight votes according to

'population' or workforce figures. If a country has more than one delegate, however, it may be difficult to calculate the number of votes to be cast by each. A weighted voting system may be considered more representative if the allocation of seats is at great variance with the numbers of employees represented by each EWC member. If, as is frequently the case, the variation in workforce figures is so great that a small minority of members can decide a vote weighted by workforce figures, then higher or more complex majorities can be defined, such as a 2/3 majority of all EWC members, or a majority of votes representing at least 2/3 of the total workforce and/or 2/3 of all countries represented in the EWC. The precise majorities to be defined in such a case can best be tailored to the company itself; there is no single formula. What is important is that if the EWC decides to establish voting procedures, they must themselves perceive the decision-making system to be fair, transparent, and representative.

A third option is to work with a hybrid of the two. This allows EWCs to sidestep, at least initially, the potentially conflictual issue of 'winners' and 'losers'. For example, the Ford EWC explicitly states in its rules of procedure that it intends to avoid taking a vote at all, and to operate by consensus. Should a consensus prove impossible to reach, however, a vote can be requested in which each representative casts as many votes as there are currently employees in his or her constituency. The presence of EWC representatives representing at least half of the company's total European workforce is defined as the quorum. To name another example, at the GEA EWC, issues are generally put to a vote according to the principle of 'one member, one vote'. At the request of any EWC member, however, the vote can be held according to a system of votes weighted according to workforce figures.

It should be emphasised in conclusion, however, that the absence of voting does not mean that the EWC will be paralysed or ineffective. On the contrary, the example of the EWC at General Motors, which has been a pioneer in negotiating on behalf of the whole European workforce, demonstrates that operation by consensus and without formal rules can be just as effective. At the same time, and as the case study of DaimlerChrysler revealed with respect to national-level employee representation, the existence of clear decision-making rules underscores a perception of fair and representative decision-making processes and outcomes, even if the system of weighted majority voting is never actually applied in practice. In the light of the wide variety of company structures and power relationships which come together in EWCs, the decision whether and how to formalise decision-making procedures is best left to EWCs themselves to decide. What's more: even discussing the issue may itself contribute to increased transparency, a responsible approach to power asymmetries, and a common understanding of the role of the EWC.

### **6.3. Negotiations in EWCs: Motivation and prerequisites**

It has been long been speculated that EWCs might take on a negotiating role. As a nascent platform for cross-border collective bargaining at the company level, EWCs were seen as potentially paving the way toward a truly European system of industrial relations. While Euro-optimists largely welcomed this prospect, since in an emergent multi-level system of European IR this would serve to further 'europeanise' national-level actors and might furthermore provide an impetus for European sector-level collective bargaining in the context of the Social Dialogue, Euro-pessimists warned against the divisive effects that company-level 'micro-corporatism' would have on national systems of IR in general and collective bargaining and the position of trade unions in particular.

Until recently, however, little was known about the extent to which EWCs had in fact become forums for negotiations between employee representatives and central management. Carley's (2001; 2002) explorative analysis of 26 joint texts or agreements which had been negotiated in 12 different companies revealed that the majority of such joint texts or agreements amounted to framework agreements, which specified a set of principles, rules or policies to be implemented at the national and/or local level. One of the most common motivations for negotiating such framework agreements was company restructuring; as a rule, it was the employee side which pushed for a European-level framework to deal with these issues. In this sense, as Carley points out, most of the themes of the joint texts and agreements, in particular insofar as they are responses to cross-border restructuring, can be seen as a continuation of the information and consultation procedures provided for in the EWCD.

The EWCD does not explicitly provide for a negotiating role for EWCs – nor does it forbid negotiations, however. Schiek (2001) argues that seen in the overall context of EU legislation in this area, in particular the Commission's sustained emphasis on negotiated, voluntary regulation, the EWCD can actually be interpreted as encouraging as much joint activity between the social partners as possible—up to and including negotiating company-level agreements.

However, Schiek's overview of the legal issues surrounding EWCs and negotiation highlights a number of open questions: On what legal basis can EWCs and central management negotiate agreements? What requirements must a negotiating mandate fulfil? In the absence of a pan-European labour law system, what is the legal nature or quality of such agreements? Do they only bind the EWC and central management, or do they also have a binding effect on local and/or national employee representations?

How can potential collisions between overlapping rights and competences be resolved? (2001: 233).

Schiek argues that, at least in the context of the German legal system, these critical legal obstacles can be overcome, however. Two of these strategies which can be accommodated within the existing legal patchwork are of particular relevance here. The first is that in the absence of a labour law framework at the European level, an EWC agreement can only pertain to the law of obligations. In other words, an agreement signed between the EWC and central management does not have the status of a collective agreement, but it is enforceable across borders to the extent that central management can be obliged to take active steps to encourage management in other countries to respect the terms of the agreement. The second strategy, linked to the first, addresses the problem of possible collisions with national labour law: since the EWC may in no way impinge upon the rights and obligations of employee representatives under existing information, consultation and negotiation processes at the national and/or local level, and since the forms and subjects of regulation are so different across Europe, the only legally viable form for an agreement to take at the European level is a framework agreement which is implemented in each country according to that country's legal system, be it by means of a company-level agreement signed by workplace employee representatives or a collective agreement signed by trade unions.

Linked to this is the question of a negotiating mandate. Schiek argues that an EWC can only negotiate a binding agreement on behalf of the national/local employee systems of workplace or trade union representations if they specifically and formally mandate it to do so. This is more likely to be possible regarding strictly circumscribed issues and measures and if the national and/or local levels retain the right of final approval of the negotiation results. Failing such an explicit mandate, all an EWC can negotiate is an agreement which is explicitly subsidiary in its effects, leaving the final decision about implementation to the national and/or local levels (Schiek 2001: 234-5).

The EWC framework agreements on restructuring are illuminating examples of the multi-level system of company-based IR in action. In order to investigate how legal and political obstacles are managed in practice, it is instructive to take a closer look at a few such pioneering agreements. Particular attention will be paid to the ways in which the process of negotiation and implementation of the framework agreements was managed within the multi-level, cross-border EWC structure.

## **Ford**

At Ford, three framework agreements have been signed by central management and the EWC. The first framework agreement, signed in January 2000, regulated the consequences of Ford's spin-off of Visteon for employees' status and representation. The second framework agreement was signed in 2001 to deal with the consequences of the newly formed joint venture between Ford and Getrag; it guaranteed the Ford employee status of all transferred employees, and committed the company to new investments to secure several factories. The third framework agreement was signed in November 2004 in response to the company's plans to introduce a project for product development and insourcing called "IOS: International Operations Synergies". In this framework agreement, it was agreed that IOS would not lead to job losses, that cost savings would be re-invested, that capacity would be fairly balanced across sites, and that transferred employees would have the right to re-training.

Prior to the 2000 Visteon agreement, the members of the Ford EWC agreed to transfer a negotiating mandate to the EWC in a resolution passed in May 1999. Following the 2001 Ford-Getrag agreement, a memorandum of understanding was reached between the EWC and central management, in which both parties agreed to negotiate cross-border solutions where appropriate, provided that the EWC members obtained a mandate from the national-level employee representatives, and agreed to implement agreements made at the European level. This negotiating mandate was formalised in the revised rules of procedure adopted in 2002. In detail, the negotiating mandate of the EWC at Ford must meet the following requirements: it can only be given regarding a specific issue which affects at least two countries; the national-level employee representations must mandate the EWC in writing to negotiate on their behalf; while the select committee is empowered to conduct negotiations on behalf of the EWC, the full EWC must formally accept or reject the results of these negotiations; an agreement reached between the EWC and central management does not take effect until the national/local employee representatives and/or trade unions have ratified it; and finally, (aside from the relevant management-side) the members of the EWC have the responsibility to ensure that the agreement is taken over and duly implemented at the local/national level.



## **GE Advanced Materials**

In 2002, the EWC at GE Advanced Materials<sup>28</sup> signed an agreement with central management about internet/email use (EWCB 2002). In 2004, the EWC signed a further agreement with central management about the data protection and employee privacy implications of pre-employment background screenings.

These framework agreements were based on a formal annex to the EWC agreement which regulated the way in which the EWC and management would approach company policies, procedures, or issues which could be facilitated by cross-border implementation rather than country-by-country implementation. In contrast to the rules of procedure at Ford, the GE Advanced Materials document specifically allows for an opt-out/opt-in process. The procedure agreed between central management and the EWC is as follows: The EWC and central management initially discuss whether an issue is most appropriately handled at the European level. If they decide this is not the case, then the existing legal national/local procedures will be applied. If the EWC and central management jointly decide that an issue is most appropriately dealt with at the European level, then the EWC members shall ask their constituencies (defined as “the national/local works councils and/or trade unions or other forms of worker representation”) for a mandate to negotiate on their behalf. The national/local workers’ representatives have the right to refuse that mandate. In this case, the existing legal procedures at national and local level will apply. Central management enters into negotiations with only those EWC members who have been mandated by their constituencies. Furthermore, the rules specify that “the EWC will obtain the strongest possible legal rights that exist in any one of the participating countries for the procedure at hand.” An agreement reached between central management and the EWC is presented to the national constituencies. At this stage, the national-level workers’ representatives have the right to opt out of the agreement. The agreement will be implemented in those countries which have accepted it. If necessary, additional arrangements can be made to suit legal requirements or existing practice. Finally, should problems occur in the implementation of the agreement, a mediation committee will be established. If this mediation is unsuccessful, then the existing national/local legal procedures will apply to implement the measure.

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<sup>28</sup> At the time, the company was operating under the name of GE Plastics.

## General Motors Europe (GME)

The first framework agreement between GME management and the EWC was signed in 2000 to address the effects of the joint venture with Fiat on GME employees, in particular, and the maintenance of existing union recognition and forms of worker representation, protection of status and benefits, and the right of return. The second framework agreement was signed in 2001 to address the effects of restructuring by implementing job security measures, and offering new placements, retraining, and early retirement packages. The key stake in this restructuring was the shutdown of part of the production facilities at GME's plant in Luton and attempts to secure the future of the plant in Ellesmere Port. In the autumn of 2001, a further framework agreement was signed which defined the common principles according to which a company-wide restructuring plan known as 'Olympia' was to be implemented at the national level. In 2005, the most recent framework agreement was signed: it addresses the effects of a radical company restructuring plan which will lead to the loss of over 12,000 jobs, or roughly 20% of its total European workforce, of which 10,000 may be lost in Germany alone.

The process of negotiating these framework agreements at GME has been quite different from those at Ford and GE Advanced Materials. In contrast to Ford and GE Advanced Materials, these framework agreements signed at GME are not based on any formal agreement with management about European-level negotiations.

Rather than adhering to formally agreed procedures and mandates, the framework agreements at GME were negotiated *ad hoc* and were closely coordinated with the trade unions under the aegis of the EMF. Working groups were set up consisting of both EWC members and full-time union officers to develop joint positions and strategies. The EWC and the unions also demonstrated their ability to mobilise the European workforce: in pan-European 'Action Days' held in 2001 and 2004, tens of thousands of GME employees across Europe participated in protests and demonstrations. In the course of negotiations in 2004, as management pitted site against site, EWC members and trade unions publicly undertook not to undercut any collective agreements, in particular concerning pay and working time. Unlike the framework agreements signed at Ford or GE Advanced Materials, the framework agreements at GME are also signed by a representative of the EMF. The only formal requirement contained in the framework agreements is that management and employee representatives must ensure that the agreements are made legally binding at the national level according to national law and practice. Since these agreements contain concrete commitments, not only with respect to employees' working conditions but also issues of union recognition and representation structures, the close involvement of the trade unions in negotiating the

agreement is a crucial element in ensuring the faithful implementation of the agreement.

As predicted by Marginson and Sisson (1996), such framework agreements have proven to be the most realistic form of company-level collective bargaining. Yet the parties are clearly closer than 'arm's length' (Marginson and Sisson 1996; 1998). Rather than engaging in "arm's length bargaining, in which the parties do not formally negotiate at European level, but influence and anticipate the reactions of one another as if they did" (1996: 190), the national-level actors were directly involved in negotiations and were charged with ensuring the implementation of the agreements at local/national level. Indeed, compared with framework agreements or joint texts on other issues, Carley (2002) found that framework agreements on restructuring left the least leeway for local or national differentiation in their implementation.

How can this be explained? Carley points out that framework agreements on restructuring were most common in companies whose operations are closely integrated across borders, and that the main drivers behind such negotiations were employees concerned about the cross-border implications of restructuring. In other words, where employee representatives saw a potential for coercive comparisons and indeed direct competition among sites, they pushed for a joint regulation at the European level. The prevalence of framework agreements on restructuring within internationally integrated companies confirms early predictions that company-level negotiations in EWCs could be triggered by a "critical incident" (Marginson and Sisson 1996).

Because they were operating in a legal vacuum, these EWCs and trade unions were obliged to develop creative, responsible, and above all transparent means of formulating and asserting common positions and strategies, while at the same time preserving their rights and responsibilities at the local and/or national level. Whether it is the closely coordinated and public cooperation among trade unions at GME, or the pursuit of carefully defined multi-step mandating procedures at Ford or GE Advanced Materials, all three examples above illustrate that it is necessary to pursue what was cast as a discursive/participative approach in Chapter Three. As was already seen in the case study at DaimlerChrysler, the examples of Ford and GME illustrate that competition can induce rather than inhibit cooperation if iterative, transparent, and legitimated arrangements and institutions are in place which respect local autonomy and yet still provide the means to pursue shared objectives.

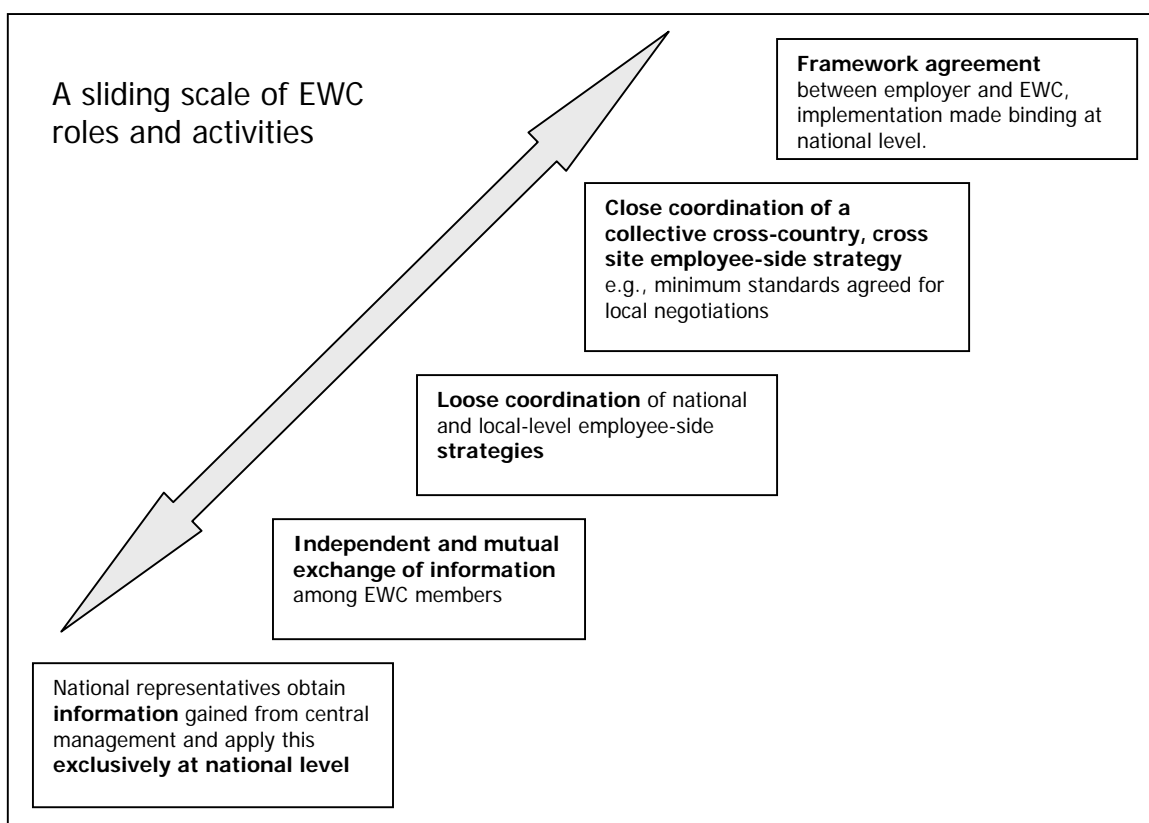
#### **6.4. What does this tell us about solidarity in EWCs?**

The answer is quite simple. If EWC members decide to act jointly, they can. Just as the key role of the Central Works Council lies more in obtaining and analysing information and in coordinating local strategies than in dictating a central strategy, the basic framework provided by EWC legislation and agreements enables the same processes. To be sure, there are significant obstacles to their ability to communicate, to develop mutual trust, and to build upon stable and responsible IR structures at the national and local levels, but the actual determination and development of role of the EWC is largely at the discretion of the members of the EWC itself.

Much has been made of the fact that EWCs' rights are relatively weak, particularly compared to the rights of national-level employee representatives. But it is important to remember that the role of an EWC is not invariably restricted to that foreseen in the agreement, let alone the law, nor can the employer determine or restrict it unilaterally.

There is much that an EWC can do on its own. Between obtaining information from central management or from fellow employee representatives for use exclusively at the national or local level and the conclusion of framework agreements with the employer for implementation at the national level, there are a range of other possible degrees of coordination. Most importantly, the cooperation of central management is only necessary for the negotiation of framework agreements. Every other degree of cooperation essentially lies in the hands of the EWC members themselves. This conception of a sliding scale of EWC roles and activities is issue-based: close coordination may not be appropriate or necessary for some issues, yet indispensable for others. For any given issue, EWC members are free to decide amongst themselves whether they merely want to exchange information, or whether they want to try to coordinate local bargaining strategies. Figure 31 illustrates this wide range of roles and activities.

**Figure 31: A sliding scale of EWC roles and activities**



Through EWCs, employee representatives at the national and local level gain access to quantitatively and qualitatively new information. A glance at the catalogue laid out in the Directive indicates what a wide range of information this entails: central management is required to inform the EWC on the structure, economic and financial situation, the probable development of the business and of production and sales, the situation and probable trend of employment, investments and substantial changes concerning the organisation, the introduction of new working methods or production processes, transfers of production, mergers, cut-backs or closures, and collective redundancies

Faced with restructuring and transfers of production across borders, however, the information provided by the employer is only part of the equation. Exchanging and pooling information independently of the employer may be even more important: to clear up misinformation, to prevent being played against one another, and to come up with the whole picture, not just the national parts. Indeed, for many EWC members this is one of the most important benefits of the EWC.

Taken together, the information received from management and from fellow members on the EWC is a crucial feature of EWC work. The key to using these information and consultation processes most effectively lies in strategically linking them to parallel processes at the local level where appropriate.

The evidence suggests, furthermore, that rights such as the right to an extraordinary meeting are used in conjunction with rights at the national level. The case study of the CWC at DaimlerChrysler demonstrated that the capacity of the central works council to foster the development of a common approach lies precisely in the iterative treatment of issues at both local and central levels. Similarly, the three examples of EWC negotiations described above make clear that it is not a question of 'who is informed and consulted first'; it is a question of whether the different levels adequately combine the information and consultation procedures at both levels.

The results of the survey conducted by IG Metall provides further evidence that both national and European levels already deal iteratively or at least in parallel with the issue of restructuring (Politycki and Schneider 2005). Of the 70 EWCs which were confronted by cross-border restructuring, only six EWCs addressed the issue solely at the national level, while the issue was addressed at both the German and European levels in 62 companies<sup>29</sup>. The question of *when* the extraordinary meeting was held was only included in course of the survey; therefore there are only 19 answers to this question. However, these 19 responses prove instructive. According to respondents, in seven companies, an extraordinary meeting was held before the final decision about the measure was taken; in eight EWCs the meeting was held after the decision at European level, but before the measures were implemented at national level; in two EWCs the meeting was held in the course of implementation of the measure; and in only two cases, the extraordinary meeting was not held until after the measure had been implemented. In 57 cases, the EWC was initially informed directly by central management about the impending restructuring measures. Taken together, the responses about the parallel treatment of the issue at both national and European level and the timing of the information at European level suggest strongly that at least the flow of information and consultation procedures between the European and national level functions more or less smoothly.

Applying the prerequisites for solidarity that were identified in Chapter Three, an EWC must be able to ensure a range of discursive/participative structures and processes if it is to generate and support solidarity. It was argued in this chapter that

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<sup>29</sup> In two companies, the issue was addressed at the EWC, but not at the national or local level in Germany, since it did not have any implications for the German workforce.

compared with Central Works Councils, there are important gaps in the constitutional character of the EWC. Ill-defined decision-making procedures and the absence of a (legal and political) legitimate EWC mandate vis-à-vis the local or national level as well as within a European IR arena raise important questions about the EWC's ability to function as peak representation structure within a federalist conception of multi-level employee interest representation at the European company level. The prerequisites identified in Chapter Three still hold true, but they must be qualified in order to better take into account the less robust political, legal, and operative framework conditions of EWCs.

Clearly, the wide-ranging opportunities for participation which were seen to play such an important role in the CWC can less easily be relied upon at the European level: EWC members have few opportunities to interact in person, and their interaction between face-to-face meetings is limited by language barriers and often restricted or even non-existent access to communications technology. Since such participation serves to continually stabilise or regenerate the normative foundation for collective activities by increasing the identification of individuals with the whole group, it is arguably more difficult to strengthen the internal social cohesion (i.e., community solidarity) as an essential condition for effective action outwards vis-à-vis the employer (i.e. combative solidarity).

It was argued in Chapter Three that participative elements must be able to strengthen the capacity of a compromise, once reached, to command commitment. Only those who are able to actively and openly participate in a discursive process can be expected to adhere to commitments made as a result of a negotiated solution or compromise.

In the light of the weak linkages between the national level and the EWC, the transparency of decision-making and a responsible approach to power asymmetries are key elements of this process. It is with respect to transparency and an EWC mandate that the gaps in the constitutional structure of EWCs are most glaringly exposed. It might be argued that this focus on formal aspects of decision-making fails to capture the social dynamics of collective decision-making. But it was seen in the case of the CWC at DaimlerChrysler that the existence of clear decision-making rules (even if they were seldom applied in practice) provided the backbone for the CWC's political processes. On the surface, the decision-making rules were never applied; beneath the surface, however, they clearly played a role in shaping the outcome. The ambiguity which arises out of the fact that decisions are taken by consensus in full knowledge that they could be forced through on the basis of formal qualified majority vote is in effect an important political resource in the work of the CWC as a whole because it serves to underscore the group's identity and fosters a responsible approach

to undeniable power asymmetries. The close attention paid to ensuring 'representative' staffing of the CWC's subcommittees was also seen to play a crucial role in ensuring the perceived fairness and transparency of the CWC's necessarily complex decision-making processes.

It was argued in Chapter Three that representatives of stronger and more influential sites must demonstrate a willingness to take a step back in the interests of the whole or to use their influence for the benefit of weaker sites; they must allow themselves to be bound into egalitarian structures if the inherent reciprocity of solidarity is to prove a solid foundation for collective identity and action. It has been argued in the literature that the 'home country' workforce is likely to dominate the EWC. As long as decision-making is informal and ill-defined, this is certainly likely to be the case. This research suggests, however, that if attention is paid to developing decision-making rules which are seen by EWC members to be fair and representative, this danger is minimised.

This argument is closely linked to the definition of an EWC mandate. There are two key dimensions: the first is the ways in which the EWC takes decisions as a group, the second is the ways in which the EWC members can be empowered by their national and/or local constituencies. It was argued above that collective action must be developed jointly and discursively: just as there is no possibility to command compliance within the CWC, there is no possibility to do so within the EWC either. As pointed out above, any framework agreement struck at the European level can only be bindingly implemented at the national or local levels. Thus, in the light of these gaps between the national and European level, and given the lack of a comparable density of interaction which functions as an opportunity to control for 'defection', a joint strategy developed at the European level relies all the more on the commitment of the individuals to act in concert at the national or local level. In other words, a strong-armed or bully mandate is, in effect, no mandate at all. Only a mandate which has been developed and agreed by all concerned has any chance at all of commanding compliance. Arguably, then, the reliance on consensus by most EWCs must be viewed with some scepticism. As even members of the GME EWC admit, their consensus does not necessarily amount to unanimity; where the stakes are high, this will most likely prove an insufficient basis for collective action.

As pointed out in Chapter Three, a 'participative works council' must be able to offer a preventive solution to the fundamental dilemma of solidarity: the greater the divisive pressure from outside to increase competition among those who strive to generate solidarity with one another, the more difficult it is to achieve solidarity. Despite their limited rights, EWCs can make use of the opportunities which occur in times of low external pressure to reach agreement on less conflictual issues. By building upon the



common legal basis provided by other EU Directives on issues such as health and safety, data protection, or anti-discrimination, EWCs can develop joint activities and local strategies. Such experience can provide a foundation of shared values and appreciation of interdependence which can better enable EWCs to cope with conflictual situations if and when they arise. By jointly tackling problems of common concern, the EWC can seek ways to actively support the generation of shared values and morals. In this way, the moral dimension of 'traditional' solidarity, the vision and idealism behind it, can be given room to unfold and be tested.

## **Chapter Seven: Summary and implications for further research, policy and practice**

### **7.1. Summary**

This thesis took as its starting point the question whether EWCs could overcome the divisive pressures of cross-border competition for jobs and investment between sites and act in solidarity. In Chapter Two, this research was situated within the large and highly varied body of literature on European Works Councils. It emerged that with respect to the potentially divisive effects of cross-site competition, opinion was divided between two camps: while the Euro-pessimists suggested that cross-site competition poses insurmountable barriers to a true europeanisation of employee interest representation, Euro-optimists by contrast saw a potential that the development of European identity and internal social cohesion could provide the foundation for solidarity in EWCs. In the light of the relatively recent phenomenon of EWCs, these arguments are necessarily speculative; both camps were able to present examples to support their respective assessments. While the Euro-pessimists explicitly mentioned cross-site competition, but largely disregarded internal and socially constructed dynamics, however, the Euro-pessimists focussed on the possibilities and conditions for the emergence of social cohesion, while leaving open the question whether such cohesion was sufficient to overcome the divisive effects of cross-border competition between sites.

This research has sought to close this gap. The central works council (CWC) established according to the German law on workplace co-determination was identified as a close analogue to an EWC. In the absence of a body of literature on the internal functioning of CWCs, this research undertook to examine in depth the experience of a single CWC as a lead case. In Chapter Three, the contributions of theories of federalism as a means of reconciling unity and diversity were applied to the multi-level system of employee interest representation. A conceptualisation of solidarity as it might be generated among the members of a central and/or European works council was developed. It was concluded that a discursive/participative structure was most likely to enable the generation of solidarity across and within a multi-level, essentially federalist system. Key analytical factors were identified which could be applied to the experience of the Central Works Council at DaimlerChrysler, and to EWCs more generally. Chapter Five explored in detail the operation of the central works council at DaimlerChrysler, covering both its day-to-day functioning as well as its core values and perceptions of its appropriate role. In Chapter Six, the

conceptual framework developed in Chapter Three and the implications of the case study findings were applied to EWCs more generally. It was concluded that the EWC can be considered a nascent federalist system at most; important gaps, however lead to problems in practice. Despite important limitations, Chapter Six concludes that solidarity within EWCs is possible, if it can be built upon a participative and transparent set of institutions and processes which are seen by EWC members and national and local employee representatives and trade unions to be fair and legitimate.

## **7.2. Implications for policy, practice and future research**

Based on the findings of this research, a number of suggestions for further research can be made. These include the need for a further development of the concept of solidarity, and a continuation of the existing tradition of quantitative and qualitative EWC research. How EWCs deal with restructuring, and what internal and external processes shape their approach should also be more closely examined. With respect to research about multi-level systems of company-based IR, as they exist in many European countries, research should examine the spread and variety of such structures with an aim to identifying the ways in which they cope with the challenges of cross-site competition. In order to do so, there is a need in this area, particularly with respect to the German literature, to move beyond legalistic analyses towards applying the approaches of sociology and political science.

In the light of the significant and problematic gaps in the legal basis for EWCs, as well as the disparate range of existing EWC practice, several weaknesses might also be addressed in the context of the long-standing demands of the trade unions to revise the EWC Directive. Based on this research, a number of issues can be highlighted which would remove the uncertainties associated with the EWCD and provide a benchmark for the improvement of the actual functioning of EWCs.

Finally, this research has important implications for practice. Trade unions and their European industry federations have an important role to play in intensifying their supporting role and in clarifying their own strategies with respect to the place of EWCs within the larger context of a europeanisation of industrial relations. For EWC members, this research suggests that they will most likely have to continue to find the creativity and courage to develop their EWCs into an institution which is complementary to existing IR structures and processes at the local and national level. The most important finding of this research – that solidarity within EWCs is possible – should be encouraging to EWC members, their trade unions, and their national and local union activists and employee representatives.

## Implications for Research

As has been pointed out by various authors, the concept of solidarity must be revisited and developed further. The findings of this research suggest that competition breeds solidarity, based on the insight that mutual dependency requires mutual support, as Durkheim posited long ago. Potentially conflicting interests can serve as the foundation for solidarity, or, as Hyman puts it, “solidarity implies the perception of commonalities of interest and purpose which extend, but do not abolish consciousness of distinct and particularistic circumstances” (2001a: 170). But how can this perception be achieved? What fosters it, what hinders it? With particular reference to EWCs or even company-based global networks of trade unions and employee representatives, how can this insight be gained despite significant differences in language, culture, and ideology and a limited ability to meet in person to develop an underlying supporting culture of solidarity?

Since the questions raised in this research have not yet been systematically investigated on a wide scale, a continuation of the existing tradition of quantitative and qualitative EWC research is necessary to develop these findings further. Quantitative research on EWCs’ activities, such as the results of re-negotiation of their agreements or the number of meetings and extraordinary meetings held, would be the most appropriate means of maintaining a bird’s eye view of EWCs. This would provide a valuable context for case-study based EWC research, which, in the light of the relative novelty of EWCs as institutions as well as the shifting framework conditions which shape both their internal and external activities, will most likely remain necessary for some time to come. Such qualitative examinations could focus on the current state of play within EWCs, what factors shape their development towards that point, and what factors might prompt a shift (either towards more integration or less). Particular attention should be paid to the ways in which EWCs cope with restructuring, since these challenges at the very least oblige the EWC to demonstrate its real role, and may provide a more complete picture of the limits to and opportunities for the generation of solidarity within EWCs.

EWC practice can be expected to continue to yield new insights into the overarching debate on the europeanisation of industrial relations. In particular, the ways in which EWCs have begun to negotiate company-based framework agreements within the legal vacuum at the European level, and the ways in which trade unions and their European federations have addressed this development, may help to refine the terms of the debate and thereby reconcile the Euro-optimists with the Euro-pessimists.

One important adjustment to the approach frequently adopted in EWC research is suggested by these findings. Much existing research on EWCs has implicitly tended to assume that there is one 'ideal' EWC against which all EWCs can be measured.

Although the German system of multi-level company-based IR is quite extensive in quantitative terms and can look back upon a longer history than can EWCs, the wide variety in the ways in which its universal framework has been filled out with very different degrees of depth and scope of cross-site cooperation suggests that variety, not sameness will be the future of EWCs as well.

This research suggests, therefore, that it may be necessary to take a more dynamic and differentiated approach to assessing the development and in particular the 'effectiveness' of EWCs. There is no point in exhorting common action on issues which are not of common concern. In many cases, the sole role of the EWC may be to serve as a source of information for use at the local level and the opportunity to have direct contact with management. This does not amount to a renunciation of the potential of EWCs; it is a recognition of the fact that there is no 'one size fits all' EWC: the primacy of IR in many companies may well continue to lie at the local level or national level. For other topics, as this research has shown, where issues are perceived to be of common concern, there is a perceived need to develop a coordinated response. A fluid and issue-specific approach is necessary, in which EWCs decide whether joint action is necessary or desirable on a case-by-case basis.

Changing company strategies and increasingly integrated company structures present new challenges at the national level as well, because international competition in global markets has been matched by an increase in competition within companies. With respect to research about central and group works councils, as they exist in many European countries, research should examine the spread and variety of such structures with an aim to identifying the ways in which they cope with the challenges of increasing centralisation of company policies in general, and cross-site competition in particular. Because of the differences between the composition, role, and competence of such instances of centralised interest representation, different questions may need to be asked within different national IR systems.

With respect to Germany, a wide range of quantitative and qualitative research needs to be conducted. Essentially, the whole range of research questions which have been investigated with regard to European Works Councils need to be investigated with respect to central and group works councils. How many central and group works councils are there? How has their number increased over time, and why? How wide is the coverage of central and group works councils? How much use has been made of the possibility of negotiating alternative arrangements by collective agreement, and

what alternatives have been developed? Has the reduction in the quorum for the establishment of a group works council in 2001 led to an increase in their number? What issues do they deal with, and how? The range of questions may be overwhelming, but the regular large-scale works council surveys conducted by the WSI<sup>30</sup> provide an opportunity to close at least some of these gaps.

As pointed out in Chapter Two, more qualitative research in Germany has focused on legal analyses of central and group works councils. This research has made it clear that since the *Betriebsverfassungsgesetz* provides only a framework, there is a need to apply the approaches of sociology and political science, for example, in order to gain a better understanding of how central and group works councils actually function in practice. Some guiding questions might be: How do CWCs and GWCs operate: how often do they meet, which activities are delegated to subcommittees, to what extent are local-level employee representatives included in the work of the CWC or GWC? What role do CWCs and GWCs play in addressing the cross-site implications of company policy: do they function as a hinge between local works councils, or as a hierarchically superior body? Which factors influence decisions and perceptions regarding joint versus independent action? How do they deal with the challenge of potentially divisive competition between local sites? How are questions of potentially overlapping competence dealt with in practice? Does an active and integrative CWC or GWC lead to an erosion of the autonomy of local works councils and thus a weakening of the entire system of workplace codetermination? Where works councils are charged with implementing collective agreements negotiated by regional trade unions, how are potential conflicts dealt with in central and group works councils, and what are the implications of this for the system of regional industrial collective agreements in Germany? These questions too may seem rather overwhelming, but considering that Central and Group Works Councils have existed for many decades, answers to these questions are long overdue.

### **Implications for policy**

The most pressing action on the part of policy-makers at the European level is to finally launch a binding revision process of the EWC Directive. In April 2004, five and a half years later than foreseen in Article 15 of the EWC Directive, the Commission launched the first phase of consultations with the social partners at the European level. In response, the European Trade Union Confederation (ETUC) demanded a rapid revision of the EWC Directive, and declared its willingness to engage in negotiations

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<sup>30</sup> See, for example Schäfer (2003).

with the European employers' federations (chiefly UNICE) on this matter. The revisions demanded by the ETUC can be grouped into four categories: first, the EWC Directive needs to be adjusted to the newer legal standard set by the SE Directive<sup>31</sup> and the Framework Directive on Information and Consultation; second, a wide range of legal problems and uncertainties which have been brought to light by actual EWC practice need to be eliminated; third, the basic rules governing EWC practice and resources need to be improved, and finally, the scope of application of the EWC Directive must be widened to include smaller companies. For its part, UNICE rejected any need for the revision of the EWC Directive but offered to discuss best practice with the trade unions in the framework of the Social Dialogue.

On 31 March 2005, the Commission launched the second phase of social partner consultations in its Communication *Restructuring and Employment, anticipating and accompanying restructuring: the role of the European Union*. There is some dispute about whether or not the Commission's Communication amounts to a formal second consultation. Rather than putting forward a proposal for discussion by the European social partners, the Commission merely encourages them to "intensify ongoing work and to start negotiations with a view to reaching an agreement among themselves on the requisite ways and means for: [...] promoting best practice in the way that European Works Councils operate, with a view to making them more effective, more especially as regards their role as agents for change ...".

With this call for further activity despite clear signals from the employers' side that they see no need for a revision of the EWCD, the Commission apparently seeks to sidestep the whole point of the social dialogue. With respect to improving the operation of EWCs, it is simply not a question of spreading best practice; it is a matter of eliminating worst practice. More importantly, by reducing the role of EWCs to being 'agents of change' particularly in restructuring processes, the Commission effectively negates the original premise of the EWCD, namely that it is about extending rights to information and consultation – i.e., industrial democracy – to the European level in the course of deepening economic and social integration within the Union. As this research has shown, EWCs have an important role to play in restructuring processes, but their role does not begin or end there; rather, EWCs provide the means to extend and coordinate activity and strategy on the employee side from the local level through to the European level within a fluid and transparent multi-level system.

This research has highlighted a number of gaps which often hinder EWCs from ensuring an effective coordination and representation of employee interests at the peak

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<sup>31</sup> Directive 2001/86/EG: *Societas Europea*

European company level. As pointed out above, most of these weaknesses can be remedied in the context of the current legal EWC framework: it has been seen that EWCs are able to develop their own tailor-made approach to decision-making, which this research suggests to be necessary to ensure the transparency on which solidarity rests, and that a more comprehensive articulation between the local/ national and European levels would go a long way towards improving the ability of the EWC to provide a useful forum for the coordination of local and national strategies.

However, a number of these shortcomings might also be remedied on a broader scale through the revision of the EWC Directive. Obviously, a revised EWC Directive would thus provide a more solid basis for negotiations in those companies which have not yet established an EWC. And, while a revised EWC Directive will have no direct effect on EWC agreements previously negotiated on the basis of the existing legislation, it might still serve as a useful benchmark for EWCs in the process of re-negotiating their EWC agreements.

When the EWC Directive was passed in 1994, it represented a ground-breaking innovation in the European regulation of workers' participation at the European level. The same matters have since been developed further and more precisely, in part in the light of the experiences gained through the implementation of the trailblazing EWC Directive. Notably, the definitions of 'involvement of employees', 'information' and 'consultation' are more precisely defined in Article 2 of the SE Directive passed in 2001. Furthermore, in order to ensure that employee representatives are able to exert some influence, in particular in cases of extraordinary circumstances, the SE Directive also provides the employee representatives with the right to meet further with central management if central management decides not to act in accordance with a position put forward by the employee representatives. If these more precise definitions, which have clearly been developed in consideration of the shortcomings of practice, particularly with respect to the content, timing, and impact of information and consultation, were to be included in a revised EWC Directive, then the role and competence of EWCs might be strengthened and the recurring controversies surrounding its role and competence might be lessened in practice.

Another weak point in practice concerns the operationalisation of the EWCs' competence regarding cross-border issues. It is in practice often difficult for individual EWC members to determine – let alone prove – that a measure proposed or implemented by management has cross-national implications. In order to secure the right to information and consultation on cross-border issues without undue delay, the burden of proof that an issue or measure has no cross-national implications even if the employee representatives suspect that it does must lie with the employer.



This research highlights that while the same discursive/participative processes which were seen to be the key requirements for solidarity within CWCs can in principle also be fulfilled within EWCs, it is clearly more difficult to do so in the light of systemic, cultural, and language barriers. The EWCD's formal provisions on employee representatives' opportunities to cooperate and to prepare themselves for the new demands of their activities at the European level fall short of what is needed. In particular, the EWCD only provides for the possibility for EWC members to meet independent of management prior to the meeting with central management. If the notion of 'consultation' is to have any meaning at all, a regular internal meeting of the employee representatives following their meeting with central management is necessary so that the employee representatives can discuss the information they have obtained and, if appropriate, prepare an own position for submission to central management. Equally, and as the SE Directive already recognises, information and consultation at the European level poses qualitatively new challenges; accordingly, the SE Directive provides for a right to training for employee representatives. If this same right to training were anchored in a revised EWC Directive, it could prove to be an important resource for EWCs as they develop their own conception of their role and duties.

Transparency of decision-making has been seen to be a key concern underpinning the legitimacy of decisions made within the EWC if these are to command compliance. The issue of decision-making and majorities in the EWC is left entirely unclear in the subsidiary requirements. A revised Directive should clearly state the method by which an EWC established according to the subsidiary requirements should take its decisions, as is already the case for the SNB. Even if some EWCs seem to operate smoothly according to consensus, there is the danger that a decision ostensibly reached by consensus amounts to a strong-armed mandate. Sidestepping this issue might seem politically less controversial, but this research argues that ensuring transparency of essentially pluralist decision-making processes is a cornerstone of the EWC's identity and its ability to generate and maintain solidarity. It might therefore also be considered to require that agreements establishing EWC by negotiations also provide for decision-making methods. This would oblige SNBs to openly confront and clarify the issues of transparency and legitimacy of collective decision-making in the EWC.

This research has shown that it is important that the work of the EWC be complementary to the local and national levels. Two areas of uncertainty could be remedied in a revised EWC Directive. First, the lack of a right of access to individual sites and the lack of provisions for a systematic inclusion of individual sites into the work of the EWC makes a democratically legitimate interest representation difficult; this has proved especially problematic in those countries in which there is no system of

information and consultation at the national level. Second, the unclear definition of confidentiality has led to situations in which all information given in EWC meetings has been declared confidential across the board. Because of the resulting uncertainty, EWC members have been unable to report adequately at the national and local levels. It must be clarified that the burden of proof of confidentiality lies with central management and that such restrictions may only be applied to information which is objectively confidential on personal or business grounds.

Chapter Three notes the importance of an umpire in ensuring the smooth and transparent iterative delegation of power and authority within federalist systems.

The issue of sequencing information and consultation across levels and the ability to legally challenge breaches of rights arising out of the Directive, the national implementing legislation, and the EWC agreements has been subject to problematic gaps in the legal systems of several countries. The EWC Directive must ensure that EWC members, both individually and collectively, have recourse to the courts and public administration processes in order to defend their rights deriving from EWC legislation and EWC agreements. Furthermore, it should more explicitly define the notion of subsidiarity, i.e., that autonomy of the national and/or local level do not preclude iterative processes of information and consultation at the local, national and European levels.

Finally, this research suggests that the EWC legislation provides a flexible framework within which EWCs can develop the scope of integration and coordination they require. The europeanisation of companies, and in particular restructuring on a European scale, is demonstrably not restricted to large companies. The same justifications for the original EWC Directive as outlined in its Preamble (the need to close the gap between national-level systems of employee representation and increasingly transnational management decision-making structures) are just as relevant for companies which employ less than 1000 workers.<sup>32</sup> This europeanisation process will continue to intensify in the course of closer economic integration, and the arbitrary restriction of information and consultation rights to the workforces of larger companies is not acceptable. For this reason the threshold figures for application for the EWC Directive should be reduced, for example to a total employment of 500, of which at least 50 are employed in at least two countries. This is not to imply that all

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<sup>32</sup> Employee representatives at several companies are known to have tried to set up an EWC because their companies have been transferring more and more executive decision-making beyond their reach, but they have been unable to initiate EWC negotiations because their companies do not meet the requirements of the EWC Directive.

companies fulfilling these necessarily broad requirements must set up EWCs, but only that those workforces in companies whose decision-making effectively takes place beyond their reach be given the means to close the gap between the national and European levels.

Furthermore, the definition of the controlling undertaking in the EWC Directive not only leaves important gaps, but it is also not dynamic enough to keep pace with the ongoing changes in company structures. In effect, this lack of dynamism and precision deprives workforces of the right to cross-border employee representation simply because their particular company structure or changes therein are not foreseen by the EWC Directive. Most problematically perhaps, there is no explicit regulation with regard to joint ventures. Even if a joint venture is indisputably a “European-scale” company according to the EWC Directive, the fact that ownership may be split 50:50 between two undertakings means that neither company can be obliged to set up an EWC. The result is that the workforce falls between the two companies and has no right to set up an EWC simply because the EWCD’s rigid definition of “controlling undertaking” based on ownership rather than control excludes their (not uncommon) company structure. To name a further example, there is no procedure outlined to be followed in cases of mergers or outsourced operations: at the extreme, the ‘new’ company – which arguably needs an EWC more than ever as the merged or outsourced company settles into its new structure– may be required to go through the lengthy three-year SNB negotiation procedure, even if one or both companies involved in the merger or outsourcing may have already had an EWC prior to the merger or the outsourcing. Lest these examples be seen as captious: these are real cases drawn from practice in which despite the EWCD’s intentions, its imprecise and short-sighted legal rules have precluded employee representatives from engaging with one another and with management at the European level.

### **Implications for Practice**

Although employers also have a role to play in improving the operation of EWCs, this section is aimed primarily towards identifying the key implications of this research for EWC members, trade unions and the European-level trade union federations.

With respect to the urgent necessity of the revision of the EWC Directive, the ETUC has a pivotal role to play, both in putting pressure on the EU institutions to take up the revision, and—perhaps more importantly—in taking the lead in developing a joint position which actively includes both the national union federations and the European Industry Federations (i.e., the sector-level trade union federations at European level).

In 1999, in preparation of the revision process foreseen in the EWC Directive, the ETUC member organisations participated in a broad-based discussion in order to develop the joint demands of the European trade unions. Since 1999, however, the trade unions, who are, after all, closest to EWC practice, have gained many new insights and experience with the EWC Directive and EWC practice. Some new problem areas have become apparent, while other issues have turned out to be far less problematic than was originally thought. Although some of these new insights and experiences are reflected in a Resolution passed by the ETUC Executive in 2004, which includes many of the points outlined above, it is urgently necessary that these new insights gained in the intervening five years be systematically analysed so that they may be reflected in the impending discussions about the revision of the EWC Directive. It should be quite clear that 'negotiations' with the European employers' federations will not be likely to yield real results, but will instead only result in further delay. The ETUC should therefore continue to push for a legislative solution, despite its own institutional interest in expanding its role in the so-called Social Dialogue.

The issue of reducing the threshold figures has been controversially discussed in the past within the ETUC and several European sector-level federations. One of the arguments against demanding a reduction of the threshold figures was the claim that until all EWCs had been set up in all the companies which currently fall into the scope of the Directive, it would be inadvisable to demand a reduction of thresholds. It was, in essence, a question of resources.

There are two main arguments against this position. First and foremost: just because an EWC *can* be set up does not mean that it has to be. Although this might strike some as an heretical argument, this research suggests that even if it should remain the goal to set up EWCs wherever possible, and certainly wherever they are needed, this does not mean that there is an obligation to do so. This research underscores the fact that this is the point behind an "optional" (rather than automatic) regulation which relies on the workforce to trigger negotiations such as the EWC.

It is the responsibility of the trade unions to prepare for the future. If and when the EWC Directive is revised, then it will most likely have been the last chance to put forward this demand for a long time. It is clear that the progress of European integration will continue to accelerate and will affect more and more areas – and companies. Everything possible must be done today to ensure that in 10-15 years' time at the latest, employees and their unions are not left with their hands tied, while any chances that employee representatives have to influence management within smaller yet highly "europeanised" companies stop at national borders.

Secondly, trade unions need to move beyond the discussion about EWC coverage rates, whereby it is loudly proclaimed that only half of all EWCs which could be set up have been set up. What was once a strategic discussion aimed at underlining the need and impact of the EWC Directive has turned into a boomerang; neither the figures about the number of companies which can set up an EWC nor the figures about the number of EWCs which have been set up are reliable. Any coverage rates calculated on the basis of these incorrect figures ends up making EWC coverage seem much more patchy than it actually is. This has been used as an argument against revision of the Directive in the Economic and Social Committee of the EU, for example. In sum, the whole discussion about coverage rates is untenable and not useful. It is far more important that the trade unions and their federations focus on being able to insist on the right to set up EWCs wherever they are needed.

### *The European Industry Federations*

As the number of negotiation processes involving EWCs increases, trade unions and in particular the European Industry Federations (EIFs) will have to develop a strategy to deal with this contentious issue. As described in Chapter Six, several EWCs have gone beyond consultation and adopted an active negotiating role on restructuring plans. EWCs have also been increasingly confronted with the issue of working time at the European level, as companies try to extract working time extensions by means of coercive comparisons.

The European Metalworkers Federation (EMF) has recently re-opened the discussion of this subject. In the past, the EMF has in principle approved of negotiations at European level, provided that any agreement is signed by the union(s). However, since the role of trade unions at European company level is not legally secured at the European level, company management usually resisted the inclusion of a trade union signature, even if the trade unions were involved in negotiations. The position of the EMF on this issue therefore amounted to a virtual – and in the end untenable – prohibition.

Collective bargaining is, of course, a core competence of national trade unions and their local representatives, based on national legislation and varying practices in different countries. The area of collective bargaining is, however, not clear-cut. Some issues which clearly lie in the competence of (external) trade unions in one country are the responsibility of works councils in another.

EWCs and trade unions are thus confronted with four main points of difficulty with regard to European-level company agreements. First, there is no legal framework for European company agreements, which means that any agreement must also be negotiated and implemented at national level in accordance with national systems and traditions; second, there is no guaranteed trade union role at European company level; third, there are to date no internal procedures for mandates and evaluation of such agreements in the European industry federations; and fourth, the potential collision within the EWC between different approaches – both legal and political – to the same issue means that a difficult balance may have to be struck in the EWC.

The ambiguity and potential for conflict means that EWC negotiations are a fundamentally political problem; the European Industry Federations must therefore provide their own internal guidelines and procedures on the way to best organise and coordinate such European company negotiations. Nonetheless, because of the different national practices, the fact that no two companies are identical, and the problem of implementation, the approach will necessarily have to be determined case-by-case. But based on this research, a number of general elements should be defined, such as ensuring transparent and ongoing cooperation between the EWC, its union coordinator, the trade unions involved in the company, and the EIF. Transparent procedures for the provision of a mandate for that specific issue must be developed, and the involvement of local and national trade unions must also be ensured.

Interestingly, the Social Agenda for 2005-2010 published recently by the Commission mentions its objective to develop a “framework” for cross-border collective bargaining at company level. It is unclear whether the Commission means negotiation by EWCs or by trade unions or both, but in the light of the resulting collision between collective labour law and/or practice in the Member States, it will be very interesting to see what the Commission actually proposes in this area.

In the meantime, and as argued in Chapter Six, the lack of a valid legal framework at the European level, and the need to accommodate a wide variety of different industrial relations systems means that the trade unions and their European federations must make a virtue of necessity. Experience suggests that EWC members are ahead of their unions in these matters. If company negotiations at the European level are inevitable – and indeed often necessary – then such negotiations are an important opportunity for trade unions to intensify their cooperation and to ensure an equitable outcome for all concerned. But ways must be found to develop a system which is flexible enough to accommodate the variety of IR systems, yet resilient enough to maintain a high standard and protect the autonomy of local and national trade unions.

Furthermore, the EIFs should intensify their work with EWCs as an integral part of their industrial policy activities. The coverage of EWCs in the automobile industry, for example, is nearly complete: all the automotive manufacturers and their 20-25 key suppliers have established EWCs. This presents the EMF with the opportunity to work directly with the top European-level employee representatives and FTOs in the development of its industrial policies for the automobile sector. The EWCs themselves have a keen interest in exchanging views and experience with EWCs from competing companies. All the companies in white goods industry, to name another example, are restructuring intensively, often with benchmarking reference to one another. The European white goods industry is concentrated in 4-5 companies in 5-6 countries; by convening this relatively small circle of key actors from the companies and trade unions, the EMF would be able to facilitate the coordination of employee-side strategies in order to better deal with the intense competition in that industry.

Finally, the EIFs need to continue to intensify their efforts to establish and support a well-functioning network of EWC coordinators. As a rule, an FTO from the company's home country is assigned the responsibility to advise the EWC on behalf of the European Industry Federation. Nearly all the EIFs have developed elaborate descriptions of what such coordination is to mean, but in practice, it is often difficult for the coordinators to play this role. The most important task is to instil a sense of "European responsibility" into the task of the coordinators, to make it clear that the coordinators act on behalf of all unions. The EIFs must also provide ongoing support for the coordinators. It is also the responsibility of the national unions to train and support the EWC coordinators.

#### *Trade unions, EWCs, and their members*

German trade unions have only very recently begun to pay attention to the specific needs of central works councils, limiting their more intensive activities to the larger, trend-setting companies and muddling through the remainder on an ad-hoc and largely invisible basis. The challenge is quite real: there are today over 500 group and central works councils within the remit of the IG Metall, for example. While until now, central works councils have been – at least nominally – advised at the national level, there is as yet no real appreciation of the need to support CWCs in the face of the particular political dilemma faced by central and group works councils: their limited competence at the central level means that they are confronted with primarily political task of coordinating potentially divergent interests and strategies at the local level.

The simultaneous centralisation and decentralisation of management processes poses new challenges for the representation of employees via trade unions and works councils. Next to the challenges for works councils sketched in Chapters Three and Five, this process also entails the potential to undermine the regional base of German collective agreements, since within a single company with operations nation-wide, the set of applicable regional collective agreements may differ considerably from one another. The stakes are high: where collective agreements increasingly provide for partial or differentiated implementation at company level, attempts to resolve these discrepancies between regional agreements quickly land in the central works council. The solution often favoured by companies is to apply a single regional agreement nation-wide; if a local workforce is thus exempted from the local agreement, however, the ability of the trade union to mobilise is curtailed in those regions whose collective agreement is not applied at the local company level.

Taking the German multi-level system of cross-site interest representation as its analytical starting point, this research has explored the ways in which federalist, pluralist multi-level structures can reconcile unity with diversity. This research has analysed in detail the workings of a particularly integrative CWC. It has identified the pervasive sources of cross-site competition, particularly within highly integrated production processes. It has highlighted the ways in which mutual dependence can provide the basis for closer cooperation and has pointed out the profoundly political nature of deciding collectively how much diversity is possible and how much uniformity is necessary. Rather than continuing to treat central and group works councils as a mere extension of local works councils which requires *ad hoc* and situational support at most, German trade unions need to recognise that central works councils are an arena in which new demands are placed on employee representatives and trade unions – an arena, furthermore, which increasingly requires closer cooperation between local branches of the trade unions. Trade unions need to grasp the importance of their role in mediating between potentially conflicting local interests.

Arguably, this challenge of centralisation is not limited to Germany; indeed, in IR systems such as that in the UK where the experiment of cross-site cooperation via joint shop stewards committees seems to have been largely forgotten, it might be worthwhile to reassess the need and means to organise employee-side cooperation across sites. The process of implementing the Framework Directive on Information and Consultation might provide the catalyst for such a re-evaluation. Most fundamentally, the UK implementation of the Framework Directive on Information and Consultation entails a choice of setting up information and consultation structures *either* at the national level *or* at the local level. This research clearly demonstrates that *both* are necessary; it is the interaction between various levels, and the corresponding ability to



appropriately respond to management strategies which is the crux of company-level employee interest representation. Based on this research, trade unions and employee representatives involved in negotiating such information and consultation structures would be well advised to aim at setting up a multi-level system. Rather than restricting employee representatives' access to management and to one another to either the local or national level, the flexibility and rigour of federalist structures based on the principle of subsidiarity should be considered; as maligned as the word "federalism" is in the UK context, it should be recalled that in this context it is the opposite of the centralisation it has often been misunderstood to mean. Federalism as it has been presented here offers the means to reconcile the need to coordinate strategy intelligently while still strictly protecting local autonomy.

Trade unions have increasingly been confronted by the challenge of restructuring, in particular those involving cross-border transfers of production. Whether real or only threatened, the threat of transfers of production abroad, and the coercive comparisons which underscore them, are credible. Employees and their representatives therefore operate under a high degree of uncertainty. By providing a forum to exchange information, to increase cooperation, and to develop joint strategies, EWCs can help to reduce that uncertainty.

The findings of this study make clear that EWC members and their trade unions must continue to intensify their efforts. The EWC as an *additional* and *complementary* forum to address the nebulous threat of globalisation must be grasped as an integral part of the work of trade unions and workplace employee representatives. By comparing information and coordinating their strategies, EWC members and their trade unions can unmask attempts to play them off against one another.

The findings of this research also highlight the need that EWCs use opportunities where there is no restructuring crisis to develop their cooperation. EWCs can address issues that are of relevance to all sites. It has often been argued that EWCs cannot address substantive issues because the laws and procedures governing them are too country-specific. There are, however, a wide range of issues for which EU Directives have established standard rules or minimum standards across Europe. Drawing on EU Directives on health and safety, data protection, anti-discrimination, or equal opportunities for men and women, for example, EWCs can build upon the fact that all of these issues explicitly provide for some form of participation by employee representatives and/or trade unions at the local level.

By 'making hay while the sun shines', EWCs can not only play a valuable role in coordinating national or local-level activities regarding company-wide policies or

measures, but they can also develop a culture of cooperation and trust as a preventative solution to the potentially divisive effects of competition between sites.

As for EWC members themselves, the results of this research make clear that in the absence of clear rules and established rights, EWCs and their coordinators will continue to have to find the creativity and courage to solve the dilemmas which they face. One way forward is to use all the instruments they have at their disposal to develop an EWC which is as participative as possible. This does not mean that everything needs to be regulated in precisely the same way in all sites. But the EWC must develop ways to identify how much differentiation is possible, and how much coordination is necessary, to maintain an even playing field. They need to ensure that the work of the EWC is intimately linked to their activities as employee representatives and trade union activists at the local and national level. EWCs and their coordinators need to be aware of what make solidarity possible. A responsible approach to the existing power asymmetries is important, as is an acute sensitivity to the difficulties posed by language and cultural barriers. In playing with open cards, EWC members may have to take a leap of faith. The key is not to suppress differences, but to make them the very foundation of their cooperation by embedding them into a shared perception of the whole.

Above all, this research has made one thing clear: where there's a will, there's a way.

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## Appendix: List of Interviews

Site	Name	Interviewed on
<b>Factories</b>		
<b>Berlin</b>	Hass, Ute	19.IV.01
	Krause, Kurt	6.IV.01
<b>Bremen</b>	Richter, Udo	26.III.01
	Werner, Uwe	26.III.01
<b>Düsseldorf</b>	Mühlenhart, Heinz	23.X.00
	Weilbier, Thomas	23.X.00
<b>Gaggenau</b>	Brecht, Michael	20.IX.00
	Schwab, Stefan	21.X.00
<b>Hamburg</b>	Dammann, Günther	26.X.00
	Dehmel, Norbert	26.X.00
<b>Kassel</b>	Gerhold, Werner	22.VI.01
	Heimrich, Robert	22.VI.01
<b>Mannheim</b>	Bürkman, Emil	14.VIII.01
	Horner, Joachim	13.X.00
<b>Rastatt</b>	Fischer, Karlheinz	21.X.00
	Haas, Rüdiger	29.III.01
<b>Sindelfingen</b>	Bleibtreu, Emil	14.X.02
	Klemm, Erich	19.IX.00
<b>Untertürkheim</b>	Lense, Helmut	23.IX.00
	Nieke, Wolfgang	27.III.01
<b>Wörth</b>	Keller, Michael	22.IX.00
	Rheude, Gerd	22.IX.00
<b>Zentrale</b>	Dörle, Bruno	28.III.01
	Roos, Richard	28.III.01
<b>Sales and Service Commission (S&amp;S)</b>		
<b>S&amp;S-Mitte</b>	Langer, Jürgen	16.II.01
<b>S&amp;S-Süd</b>	Reinhard, Wolfgang	20.VIII.02
<b>S&amp;S-Südwest</b>	Willmann, Franz	12.VII.01
<b>S&amp;S-West</b>	Görgemanns, Alfons	24.X.00
<b>Research and Development sites</b>		
	Lederer, Elisabeth	30.III.01
<b>Guests in the Central Works Council</b>		
<b>Ludwigsfelde</b>	Krüger, Gudrun	13.VII.01
<b>Secretariat</b>	Hommel, Martin	12.IX.99
<b>IGM</b>	Wurl, Bernhard	28.V.00
<b>EvoBus</b>	Lehmann, Kurt	30.III.01